BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA


MOTION TO SUSPEND CONSIDERATION OF PACIFIC GAS AND ELECTRIC COMPANY’S APPLICATION FOR APPROVAL OF THE RETIREMENT OF DIABLO CANYON POWER PLANT, IMPLEMENTATION OF THE JOINT PROPOSAL, AND RECOVERY OF ASSOCIATED COSTS THROUGH PROPOSED RATEMAKING MECHANISMS

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I. INTRODUCTION

Through this document and by their attorneys, Progressive Law Group LLC, Environmental Progress ("EP") moves the Commission for an order suspending proceedings on Pacific Gas and Electric Company’s application for approval of the retirement of Diablo Canyon Power Plant (DCPP), implementation of the Joint Proposal and recovery of associated costs through proposed ratemaking mechanisms until elected bodies have the opportunity to consider DCPP issues in the context of California’s broader climate, air quality and economic goals, and at least until:

1. The pending criminal investigations and related processes in which the CPUC is entangled are completed, and their outcomes disclosed to the public;

2. The California Public Utilities Coalition (CPUC) has made public all of the emails associated with development of the now-discredited proposed settlement arising from the closure of the San Onofre Nuclear Generating Station (SONGS), including those involving CPUC President Michael Picker;

3. Reforms of the CPUC are accomplished.

Further explanation and justification for this motion is set forth below, and reflected in the included exhibits and references.
II. DISCUSSION

A. The last time the CPUC rushed through a proposal that was negotiated in secret to close a nuclear power plant the result was higher electricity rates, greater pollution, and federal and state investigations of suspected criminal activity by CPUC Commissioners.

The closure of the San Onofre Generating Station (SONGS) imposed enormous economic, environmental and health impacts, and undermined California’s climate policy commitments. So would the closure of the Diablo Canyon Power Plant (DCPP or “Diablo” or “Diablo Canyon”).

The process of SONG’s closure tainted the CPUC. The US Attorney and California’s District Attorney have on-going criminal investigations into how the CPUC initiated and rushed through a settlement proposal that closed SONGS. That settlement resulted in the requirement that ratepayers pay $3.3 billion out of a $4.7 billion settlement.²

The CPUC defended that outcome for 18 months before finally agreeing to re-open settlement proceedings last May.³

Now, the CPUC is being asked to rush through yet another proposal that the CPUC’s President, the Commissioner assigned to this proceeding, has already blessed — this time publicly. When President Picker was asked last November by

² Jeff McDonald, “AG Says CPUC Probe Hasn’t Stalled,” San Diego Union Tribune, May 14, 2016. (Exhibit 1)
³ Jeff McDonald, “State to Reopen San Onofre Settlement Deal,” San Diego Union Tribune, May 9, 2016. (Exhibit 2)
the *San Francisco Chronicle* whether he supported or opposed re-licensing for DCPP. Picker said, “We have, in general, a wealth of choices, so no one plant is absolutely essential.”

It is a remarkable statement given DCPP’s size, and what happened after SONGS closed. DCPP is California’s single largest source of low-carbon power. It provides nine percent of California’s electricity and 21 percent of its low-carbon power. The closure of SONGS, which produced about the same amount of power as DCPP, created opportunities for market manipulation, drove up electricity prices, and spiked air pollution.

And, greenhouse gas emissions from California’s power sector shot up after SONGS was closed. Between 2000 and 2010, California’s in-state power sector greenhouse emissions had declined 21 million tons. Between 2011 and 2014 they rose 10.5 million tons. The closure of SONGS was the largest reason for the increase — larger even than the loss of hydro-electricity from the drought.

Given this history, it is perhaps understandable that PG&E is seeking to rush through the CPUC a closure proposal, negotiated in secret with hand-chosen parties, that would impose indeterminate and non-bypassable obligations on California

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5 Michael Picker, "Nuclear Power’s Last Stand in California: Will Diablo Canyon Die?" *San Francisco Chronicle*, November 14, 2015. (Exhibit 3)
6 California Energy Almanac, “In-State Electric Generation by Fuel Type,” 2016. (Exhibit 4)
ratepayers. PG&E, a sophisticated party, got CPUC President Picker’s message. PG&E’s 80-page Application and 280 pages of Testimony rest centrally on President Picker’s communication that DCPP is not “absolutely essential.”

PG&E is seeking action before criminal investigations are completed, before secret emails are made public, and before proposed CPUC reforms are implemented.

Given the profound energy, economic and environmental implications of closing DCPP, and the crisis of legitimacy the CPUC is suffering, the CPUC should suspend proceedings so that the fate of DCPP can be taken up by the legislature in deliberations over California’s broader energy and environmental strategy. If the CPUC were to actively take up this issue, it should only do so after its credibility has been restored through transparency, disclosure, and the resolution of pending investigations.

B. Unresolved questions remain about the roles played by current CPUC Commissioners and a party to this Joint Proposal in the now-discredited SONGS settlement.

State and federal criminal investigations of the California Public Utilities Commission (CPUC) appear to center on $25 million in funding that former CPUC President Michael Peevey arranged, with the assistance of current CPUC Commissioner Michael Florio, to have incorporated into a settlement agreement to
close SONGS. The investigation appears to be premised on the suspicion that
Commissioner Peevey intended to benefit personally from the money. According to
the search warrant:

Commissioner FLORIO and ALJ DARLING issued a ruling that the
proposed SONGS closure settlement could not be supported without
two amendments, including a $25 million dollar commitment to the
University of California over five years.11

i. Key information about the roles CPUC Commissioners Picker and
Florio may have played in adding a $25 million side contribution
into the now-discredited SONGS settlement proposal remains
undisclosed to the public.

During the timeframe of the SONGS settlement, President Peevey
communicated regularly with current CPUC President Michael Picker and current
Commissioner Mike Florio. At the time of some of these communications, current
CPUC President Picker was working as an advisor to Governor Jerry Brown.
According to the San Diego Union Tribune, in July 2013, both former President
Peevey and current President Picker attended a three-hour post-San Onofre
“strategy dinner.” Commissioner Picker was on Gov. Brown’s “loss of SONGS task
force.” 12 The CPUC has acknowledged 63 SONGS-related communications to or

10 Jeff McDonald, “AG Says CPUC Probe Hasn’t Stalled,” San Diego Union Tribune, May 14, 2016. (Exhibit 6)

11 Statement of Probable Cause supporting Search Warrant 71801 for personal email
records of Stephen Pickett, Special Agent Reye Diaz, September 25, 2015. (Exhibit 7)

12 Jeff McDonald, “San Onofre Plan Details Under Scrutiny,” San Diego Union-Tribune, March
14, 2015. (Exhibit 8)
from Picker.\textsuperscript{13} The agency, however, is litigating against disclosure of those communications.

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  \item \textbf{ii. There are important unanswered questions concerning what John Geesman, attorney for the Alliance for Nuclear Responsibility (A4NR), a party to PG&E’s Joint Proposal, knew about former President Peevey’s effort to secure a side-contribution as part of SONGS settlement}
\end{itemize}

Alliance for Nuclear Responsibility (A4NR) is one of the entities behind the Joint Proposal at issue here, and was involved in the CPUC’s consideration of the SONGS settlement. A sworn statement indicates A4NR’s attorney, John Geesman, had been singled out by then President Peevey as important to the potential success of a SONGS settlement. According to former Southern California Edison (SCE) executive Stephen Pickett’s declaration,\textsuperscript{14} former President Peevey specifically emphasized that Attorney Geesman should be invited into the private negotiations that led to the SONGS settlement proposal:

President Peevey made it clear, however, that in the event of a permanent shutdown of SONGS he thought it would be best for SCE to engage in settlement negotiations with appropriate consumer groups and other interested parties, and bring a settlement proposal to the CPUC for consideration. President \textit{Peevey specifically mentioned John Geesman, who represents the Alliance for Nuclear Responsibility, as one possible party}.\textsuperscript{15}

\textsuperscript{13} Jeff McDonald, “Aguirre Pushing for Brown’s Emails,” \textit{San Diego Union-Tribune}, November 13, 2015. (Exhibit 9)

\textsuperscript{14} Declaration of Stephen Pickett, April 28, 2015, Exhibit 10)

\textsuperscript{15} Emphasis added.
On Pickett’s return to the U.S., Pickett’s affidavit indicates he and the President of Southern California Edison, Ronald Litzinger discussed negotiating instead with another consumer group, The Utility Reform Network (TURN), according to an email sent by Mr. Litzinger to three different SCE executives on April 11, 2013:

[Pickett] said President Peevey feels strongly about Geesman. I merely responded his testimony shows him to be merely a “bomb thrower”. He said he is smart and could be trusted – “at least when he was in a superior position as a regulator”. I again stated his testimony was inflammatory.16

Attorney Geesman has been a regulator at the highest levels of California’s energy system. In 1979, he was appointed by Gov. Jerry Brown to be Executive Director of the California Energy Commission. From 1997 to 2002, Attorney Geesman was Chair of the Board of Governors of the Power Exchange. In 2002 he was appointed to the board of the California Independent System Operator. In 2003 he was named Commissioner of the California Energy Commission.17 In 2011, the Los Angeles Times reported that attorney Geesman was Gov. Brown’s top choice to be president of the CPUC.18 Instead, Brown kept Commissioner Peevey as President of the CPUC, and Geesman approached A4NR to be their attorney in the

16 Email from Ronald Litzinger, April 11, 2013, (Exhibit 11) Emphasis added
17 John Geesman, LinkedIn. (Exhibit 12)
organization’s efforts to close San Onofre and Diablo Canyon, California’s two remaining nuclear plants.19

According to the San Diego Union-Tribune, which interviewed Attorney Geesman, President Peevey and Attorney Geesman spoke privately during consideration of the SONGS settlement proposal, and discussed setting up a “research group” to “examine impacts of greenhouse gas on the environment:”

Alliance attorney John Geesman also noted there was no money set aside to pay for studying the impact of burning so much extra fossil fuels to make up for the lost San Onofre output.

“The proposed settlement ignores core CPUC priorities,” Geesman wrote.

Two months later, Peevey called Geesman out of the blue, according to a disclosure filed by the Alliance for Nuclear Responsibility lawyer in July. The two men talked about setting up a research group to examine impacts of greenhouse gas on the environment.

Peevey “did not mention any UC connection in his call to me,” Geesman told U-T San Diego. “Let me add that he did not mention any dollar amount or how he intended to address CO2 concerns.”

The CPUC’s disclosure requirements for private “ex-parte” communications between a party and a Commissioner call for a description of the “content” of the communication. (Rule 8.4(c)) A4NR’s related notice of ex parte communication did not mention discussion of setting up a “research group” or how it could be funded through the proposed SONGS settlement.

19 Rochelle Becker, untitled, Alliance for Nuclear Responsibility, June 19, 2013. (Exhibit 14)
*Ex parte* communication practices, including those by the lead proponent of the Joint Proposal in this case, PG&E,\(^{20}\) are a central concern driving legislative calls for reform.

**C. Problematic secretive practices at the CPUC continue despite promises of reform.**

i. **Current commissioners are continuing a longstanding pattern of making public apologies and promises while continuing the same practices.**

There is a pattern of CPUC Commissioners apologizing and promising to change while simultaneously continuing the same behaviors.

For example, on September 15, 2014, Commissioner Florio apologized, then-President Peevey recused himself from multiple proceedings, and then-President Peevey’s Chief of Staff resigned during an uproar over inappropriate contact with DCPP Joint Proposal sponsor PG&E in a Gas Transmission and Storage proceeding. When the contact was exposed, a CPUC press release disclosed that PG&E sought to influence which Administrative Law Judge would be assigned to the matter. The Commission promised an independent review “to guard against future ex parte violations.” Commissioner Florio assured stakeholders and the public “that this will not happen again.”\(^{21}\)

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\(^{20}\) PG&E’s ex-parte communications with Peevey and other CPUC Commissioners in the wake of the natural gas pipeline explosion that killed eight people in San Bruno, California.

\(^{21}\) CPUC, “CPUC Takes Action in Response Inappropriate PG&E Contact with Agency Officials,” September 15, 2014. (Exhibit 15)
However, just days before this apology and public promise, Commissioner Florio had been secretly working with former President Peevey to add language to the SONGS settlement to require the $25 million contribution referenced above.

Similarly, at the very moment current CPUC President Picker was acknowledging the problem of having CPUC commissioners be too close with the interests they regulate, he was co-hosting a gala event for former President Peevey that epitomized the coziness between the CPUC and the interests it regulates.

In his introductory remarks as CPUC President, Picker had acknowledged the crisis of credibility at the agency, stating “The most obvious examples are a series of emails that show easy access to CPUC decision makers by utilities and other interested parties. They are troubling and very painful to read.”\(^\text{22}\) Within days of that speech, invitations were being sent out to individuals in the energy industry to attend a gala celebration for former President Peevey that was co-hosted by current President Picker.\(^\text{23}\) President Picker is reported to have raised money from an energy company, labor organizations and attorneys for the event\(^\text{24}\).

Organized by a public relations executive, the Peevey gala seemed to send the message to the energy companies, labor unions and utilities that have significant financial dealings with the CPUC that, despite the criminal investigation, there

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\(^{23}\) Jeff McDonald, “Ex-Regulator to Be Toasted by Industry,” January 30, 2015. (Exhibit 17)
\(^{24}\) Michael Picker, California Form 803, filed February 3, 2015 (Exhibit 18)
would be continuity at CPUC. One of the celebration’s co-hosts was former CPUC commissioner, Susan Kennedy, who received a battery contract with SCE in April 2015\textsuperscript{25} that was approved by CPUC in November, 2015.\textsuperscript{26}

A San Diego Union Tribune story indicates that, despite President Picker’s promises, he engaged in continuous email exchanges with Kennedy from 2014 until CPUC approved her SCE battery contract in 2015.

The email exchange with then-Commissioner Picker was one of many.

U-T San Diego reported last month that the new commission president engaged in similar backchannel communications with industry executives and lobbyists as his predecessor.

Kennedy’s emails to and from Picker show her counseling him on commission business, offering introductions to industry lobbyists and helping him to comply with state rules governing the disclosure of contributions to the Peevey dinner – all while her Edison deal was in the works.\textsuperscript{27}

\textbf{ii. Contemporaneous to his promises of transparency, President Picker sought to keep secret the extent of his involvement in fundraising for Peevey gala dinner, and his emails relating to SONGS settlement.}

According to the San Diego Union-Tribune, which acquired and reported on related emails, President Picker consulted CPUC legal counsel for ways to avoid

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\item \textsuperscript{25}Jeff McDonald, “Power Player Got Energy Deal,” \textit{San Diego Union Tribune}, April 27, 2015 (Exhibit 19)
\item \textsuperscript{26}Jeff McDonald, “CPUC Approves Edison Energy Deals,” \textit{San Diego Union Tribune}, November 19, 2015 (Exhibit 20)
\item \textsuperscript{27}Jeff McDonald, “Power Player Got Energy Deal,” \textit{San Diego Union Tribune}, April 27, 2015 (Exhibit 19)
\end{itemize}
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disclosing the fact that he was raising money from interest groups for the gala celebration for Peevey:

According to emails obtained by U-T San Diego, commission attorneys informed Picker that he would have to disclose that funds were raised in his name.

Picker inquired whether the money raised could be divided among him and other sponsors, staying under a $5,000 reporting threshold. Attorney Christine Hammond said no. He also inquired whether some action was required on his part — such as directly calling someone to ask for money — to trigger the reporting requirement. Hammond said no to that, too.

“You will have to do the reporting, as none of the other sponsors can satisfy your reporting requirement,” Hammond wrote on Jan. 2.

She underlined the "you."

(...) Picker says his only real role in the event was to pay for his own ticket, that his listing as a sponsor was a mistake and he made no effort to enlist other attendees. His spokeswoman, Terrie Prosper, told U-T San Diego on Feb. 24 that the commission would provide documentation of his payment within a few days, but has yet to do so.28

### iii. The CPUC refuses to release President Picker’s email correspondence with Peevey and others relating to SONGS

In his January 15, 2016 introductory remarks as CPUC President, Picker said, “Whatever comes out of those investigations, the emails are signs to California citizens, to our stakeholders, and to ourselves, that we may not be ensuring equal

28 Jeff McDonald, “CPUC boss had questions before disclosing party role,” March 27, 2015. (Exhibit 21)
access to our decisions and to our decision makers for everyone – our core value of fairness. What I can do as President is to make sure that does not happen again.”

But contemporaneous to those remarks, and since, the CPUC has sought to prevent the release of current President Picker’s emails relating to the SONGS disclosure when he worked as advisor to Governor Brown, even though the correspondences address issues of keen public interest.

During 2012-2014, there were countless back-door meetings with Edison about San Onfore involving the CPUC. In addition to the meeting in Poland and the other 35 secret meetings, there were meetings in London, Los Angeles (the private California Club) and San Francisco. Commissioners Picker, Peevey, and Sandoval participated in several of those meetings. There were also many phone conversations between Edison and CPUC officials regarding San Onofre. Picker participated in many of these secret discussions, both while at the Governor’s office and when he was at the CPUC. After the secret Warsaw meeting, Picker met with Peevey about San Onofre at the very private club – the California Club — in Los Angeles. Picker has failed to produce his emails with Edison and others regarding the plan to end the investigation.

A state Superior Court highlighted that public interest in the email correspondence when it ruled the CPUC should have to justify why it would not release emails. Judge Ernest Goldsmith made a strongly worded call for CPUC to disclose Picker’s SONGS correspondence first in November 2015 and again in January 2016. In November Goldsmith said:

30 Letter from Michael Aguirre to Assemblymember Anthony Rendon, April 6, 2015. (Exhibit 22)
“This is a big deal. This is not a trivial issue to the taxpayers of California. And just like the San Bruno events were not a trivial deal, and when something is big enough, it’s just got to come out. It’s going to come out, and it’s either going to be horribly painful, or you can just do the right thing.”31

In January 2016, Goldsmith said:

“Withholding records of allegedly ex parte secret deals resulting in shifting $3.3 billion of utility losses to ratepayers cannot possibly be a regulatory function of the PUC. It is not realistic that the Legislature intended that [Public Utilities Code] Sec. 1759 should be invoked to insulate PUC officials accused of corruption from public scrutiny.32

(...) The core value of a democracy is the right of citizens to know the actions of public officials.33

On August 30, the 1st District Court of Appeal reversed the Superior Court’s decision and prohibited it from conducting further proceedings, but the matter could be appealed further, and indeed attorney Aguirre indicated he may do so:

Aguirre disagreed with the ruling, noting that aggrieved parties have a right to be heard at the Superior Court level, but not by an appellate court.

“The appellate court waited until it was too late for the legislature to respond, then announced they were going to shield Gov. Brown’s

33 Jaxon Van Derbeken, “Order could lead to release of emails between Brown’s office, CPUC,” San Francisco Chronicle, January 25, 2016 (Exhibit 25)
files from disclosure,” Aguirre said. “They really are not interested in any kind of reform.34

Legislative leaders have called on President Picker to release the emails. On March 19, 2015, Assembly member Anthony Rendon, Chair of the Committee issued a statement urging President Picker to release all of the emails relating to the SONGS disclosures:

President Picker, it is my solemn belief that your efforts to reform the commission and restore the public’s trust cannot be completed until the dark clouds of the SONGS settlement and the specter of process manipulation by your predecessor are fully and completely removed. Anything short of total transparency will be viewed by the public, this committee and history as a complete failure to meet the duties of the commission.35

iv. CPUC President Picker is reported to have played a key role in killing August 2016 legislation in the California legislature that would have reformed the CPUC and practices related to release of emails.

CPUC reform legislation failed on August 30, 2016 in part due to direct lobbying by CPUC President Picker, according to reports by the Los Angeles Times and San Diego Union Tribune. The legislation would have allowed for the Superior Court to review decisions when regulators refuse California Public Records Act

34 Liame Dillon, “How a bid to reform the CPUC fell apart on the last day of the session,” Los Angeles Times, September 2, 2016 (Exhibit 26). Jeff McDonald, “2 CPUC Reform Proposals Die, Emails Will Stay Secret,” San Diego Union-Tribune, September 1, 2016. (Exhibit 27)
35 Letter from Assemblyman Rendon to Picker, March 19, 2015. (Exhibit 28)
requests, as the CPUC did regarding email exchanges with President Picker while he was working on behalf of the Governor.36

The legislation was the result of a June 2016 compromise that resulted from negotiations after Gov. Brown vetoed legislation in October, 2015 that would have required greater transparency by the CPUC. The Bill’s co-sponsor, Mark Leno, told the Los Angeles Times that “I’m not as surprised as I am disappointed” and that Brown "has to understand the commission is only effective as long as it has public trust. And with all the revelations in the past year, and the ongoing criminal investigations, trust has waned.”37

D. CPUC’s crisis of legitimacy should lead Commissioners to suspend proceedings on PG&E’s DCPP application

CPUC commissioners committed to democratic process and the rule of law must vote to suspend proceedings on PG&E's DCPP settlement until CPUC’s crisis of legitimacy is resolved.

EP’s call for CPUC to suspend proceedings has the support from a group of over 50 scientists and environmentalists who on August 11, 2016, published an open letter to Governor Jerry Brown calling for the future of DCPP to be determined

36 Jeff McDonald, “2 CPUC Reform Proposals Die, Emails Will Stay Secret,” San Diego Union-Tribune, September 1, 2016. (Exhibit 27)
by the state legislature, not the CPUC. The group of scientists and environmentalists specifically cited the CPUC’s crisis of legitimacy.

Given the serious harm to the environment, the economy, and the ratepayer interests that would flow from Diablo’s closure, we are deeply troubled by the lack of democratic process surrounding the Joint Proposal. It was decided in secret negotiations between PG&E and unaccountable anti-nuclear groups, some with financial ties to the renewables sector. Sending this proposal to the CPUC, an institution that is struggling with its own crisis of credibility relating to improper relationships with regulated industries, would raise further doubts about the legitimacy of the proceedings.38

California’s Air is getting dirtier and it is moving speedily in the wrong direction on climate change.39 The scientists and their supporters asked the Governor to establish an alternative process. Environmental Progress asks the Commission to suspend this proceeding to allow for such a process.

III. CONCLUSION

In its Joint Proposal filing PGE asks the CPUC to rush this matter by issuing a final decision by June of 2017 – reducing, by half, the CPUC’s default 18-month time frame for ratesetting proceedings. (Rule 2.1(c). (PGE Filing, p. 8). Even without the influence of the cloud under which the CPUC is operating, a proposal of this importance, which entails abandonment of California’s climate commitments,40

38 Letter from climate scientists and environmentalists to Governor Jerry Brown, August 11, 2016. (Exhibit 30)
39 Exhibit 31
40 Diablo Canyon provides 9% of California’s electrical needs and 21% of its low-carbon electricity, presuming biomass-sourced electricity is included and credited as “low carbon.” (Source: US Energy Information Administration). California recently adopted SB 32
would not properly be considered within the default time frame, much less a truncated one, and not before an agency that has not reformed itself.

The CPUC should allow the legislature time to act on DPCC and CPUC reform. Before considering a proposal imposing these huge climate, air quality and economic impacts, the Commission should first fully repair its credibility and rebuild public trust in the institution. This will only be accomplished through embracing the transparency the CPUC has thus-far avoided, and allowing time for the criminal investigations to be result in either abandonment, dismissal, or filed charges, accompanied by public disclosure.

Such processes require time. This CPUC has nearly a decade before DPCC’s carbon free, emissions-free contribution to California’s energy system would be removed, even under the Joint Proposal.

Under the very unique circumstances facing the Commission, it should suspend this matter indefinitely.

requiring greenhouse gas emissions to be reduced 40% below 1990 levels by 2030. [Link](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB32 (Exhibit 31)

An ambitious analysis of how to meet less demanding goals (before adoption of SB 32) already contemplated unprecedented changes to California’s economy, while simultaneously presuming that the Diablo Canyon would operate until 2045 and that the electrical output of the San Onofre Nuclear Power Station (“SONGS”) would be replaced with equivalent emissions-free electricity from a different nuclear power plant. Greenblatt, 2015, *Modeling California policy impacts on greenhouse gas emissions*, Energy Policy, Volume 78, March 2015, Pages 158–172 [Link](http://www.sciencedirect.com/science/article/pii/S0301421514006892)
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