



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Implementing Senate Bill 846 Concerning
Potential Extension of Diablo Canyon
Power Plant Operations.

R.23-01-007

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S VERIFIED COMMENTS
ON ORDER INSTITUTING RULEMAKING TO CONSIDER POTENTIAL
EXTENSION OF DIABLO CANYON POWER PLANT OPERATIONS IN
ACCORDANCE WITH SENATE BILL 846**

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SUMMARY OF RECOMMENDATIONS

- The California Public Utilities Commission (Commission) should not authorize any mechanism for the recovery of Diablo Canyon Power Plant (DCPP) extended operations costs without concurrently addressing the allocation of associated benefits.
- Whether the Commission addresses the annual process for the review and approval of DCPP extended operations costs in Phase 1 or Phase 2 of this proceeding, the Commission must establish that process by early 2024.
- The Commission should set a date for an evidentiary hearing at this time to not preclude the opportunity for record development through witness examination.
- The Commission should adopt California Community Choice Association's alternative scheduling proposal, which allows for resolution of Phase 1 by the end of 2023.

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The California Community Choice Association¹ (CalCCA) submits these Verified Comments in response to the *Order Instituting Rulemaking to Consider Potential Extension of Diablo Canyon Power Plant Operations in Accordance With Senate Bill 846* (OIR), issued January 20, 2023, and pursuant to Rule 6.2 of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure and the directives provided by the OIR.

I. INTRODUCTION

Senate Bill (SB) 846 requires the Commission to consider extending the life of Diablo Canyon Power Plant (DCPP) to protect California from the risk of creating near-term shortfalls in procured capacity as the State addresses greenhouse gas (GHG) reduction and electrification

¹ California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Energy For Palmdale's Independent Choice, Lancaster Choice Energy, Marin Clean Energy, Orange County Power Authority, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Santa Barbara Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

goals.² The legislation splits the costs of extending DCP's operations for this purpose between customers of all load-serving entities (LSEs) subject to the Commission's jurisdiction in Pacific Gas and Electric Company's (PG&E's) service territory, and customers of all LSEs subject to the Commission's jurisdiction in the entire state of California. New non-bypassable charges (NBCs) will earn the revenue necessary to cover those costs. The OIR's proposed scope largely covers the different components necessary to address these issues, in addition to the critical issue of whether DCP's operations should be extended in the first place.

There are several places where the final scoping ruling should clarify or depart from the OIR. *First*, the proceeding should consider both sides of the cost recovery coin within Phase 1. If non-PG&E customers are paying for DCP's continued operation, the benefits of that continued operation should flow back to those customers via the optional allocation of Resource Adequacy (RA) capacity and GHG-free attributes. Approving cost recovery without determining benefit allocation would require customers to pay for values they do not receive. Additionally, this could put LSEs other than PG&E in the position of potentially over-procuring RA.

Second, whether the Commission addresses the annual process for the review and approval of DCP extended operations costs in Phase 1 or Phase 2 of this proceeding, the Commission should complete that process by early 2024 and not over a 36-month timeline. The forecast nature of ratesetting means rates need to be in place *before* extended operations at Unit 1 commence in

² See Cal. Pub. Utils. Code § 712.8(q) ("The Legislature finds and declares that the purpose of the extension of the Diablo Canyon powerplant operations is to protect the state against significant uncertainty in future demand resulting from the state's greenhouse-gas-reduction efforts involving electrification of transportation and building energy end uses and regional climate-related weather phenomenon, and to address the risk that currently ordered procurement will be insufficient to meet this supply or that there may be delays in bringing the ordered resources online on schedule. Consequently, the continued operation of Diablo Canyon Units 1 and 2 beyond their current expiration dates shall not be factored into the analyses used by the commission or by load-serving entities not subject to the commission's jurisdiction when determining future generation and transmission needs to ensure electrical grid reliability and to meet the state's greenhouse-gas-emissions reduction goals.").

November 2024 (if the Commission extends the life of DCPD in this proceeding). As such, a review and approval process must begin no later than early 2024.

Third, while Phase 1 can and should be completed by the end of this year, it is likely to require more process than that afforded in the OIR. The creation of new NBCs — and the escalation factors that should accompany them — is a fact-intensive inquiry that is better suited to a testimony and hearing process than a workshop process. In addition, parties beyond PG&E should be allowed to submit initial proposals on NBC-related issues. Regardless, more than 30 days between proposals and replies to proposals is necessary to give parties sufficient time to analyze proposals and conduct discovery. As shown in CalCCA’s suggested schedule below, there is plenty of time to build a sufficient record using these mechanisms while still ensuring the resolution of Phase 1 by the end of this year.

II. DESCRIPTION OF CALCCA

CalCCA represents the interests of 24 community choice aggregators (CCAs) in California, including 11 CCAs that serve PG&E’s delivery service customers. Except for San José Clean Energy (SJCE) and CleanPowerSF, each of those 11 CCAs is governed by a Board of Directors comprised of elected officials who represent the individual cities and counties the CCA serves, or an elected City Council. CleanPowerSF is the CCA for the City and County of San Francisco, which the San Francisco Public Utilities Commission operates. SJCE is the City of San José’s CCA program, which the San José Community Energy Department administers. While CalCCA’s advocacy frequently benefits both bundled and unbundled customers, the CCAs are the sole advocates for their customers and their local energy programs before this Commission.

CCA customers receive generation services from their local CCA and receive transmission, distribution, billing, and other services from PG&E. As such, CCA customers in PG&E’s service

territory must pay the same electric distribution, transmission and non-bypassable rates as PG&E's bundled customers. However, CCA customers pay CCA-specific generation rates, which vary and are partially influenced by local mandates to increase electric vehicle use, procure and maintain clean electricity portfolios that in many cases exceed state requirements for renewable generation, and achieve other local goals.

Importantly, CCA and other unbundled customers are also subject to several NBCs, including the Power Charge Indifference Adjustment (PCIA) and the Cost Allocation Mechanism (CAM). CCA customers will also be subject to NBCs established in this proceeding to recover the costs of extended operations at DCP. Thus, as the OIR acknowledges,³ this proceeding will decide questions that have a material financial effect on CCAs and their customers.

III. COMMENTS ON SCOPING

A. **The Commission Should Not Authorize Any Mechanism for The Recovery of DCP Extended Operations Costs without Concurrently Addressing The Allocation of Associated Benefits**

Proposed Scoping Issue 3 in Phase 1 of this OIR is as follows: "Whether any additional cost recovery mechanisms, agreements, and/or orders are needed prior to the establishment of retirement dates for Diablo Canyon Units 1 and 2."⁴ If the Commission decides to extend DCP operations, it is clear new mechanisms will need to be created in Phase 1 of this proceeding to recover the costs of DCP, which will no longer be funded via the PCIA. Those new cost recovery mechanisms will include one or more new NBCs that contribute to what PG&E has termed the "DCP Extended Operations Balancing Account" or DCEOBA. PG&E will fund the DCEOBA via new NBC(s) assessed on customers across the state (*e.g.*, NBCs that recover the \$6.50 per

³ OIR at 10.

⁴ *Id.* at 8.

megawatt hour (MWh) volumetric payment; the \$50 million fixed payment per unit per year; capital expenditures, incremental decommissioning planning, and other costs associated with extended operations; and the funding of a balancing account to cover replacement power costs);⁵ and customers in PG&E’s service territory (the \$6.50/MWh additional volumetric payment fee).⁶ These NBCs should be assessed on both bundled and unbundled customers either as a stand-alone line-item charge or via distribution rates, similar to the CAM. Parties require the time and tools necessary to develop a record regarding such NBC-based cost recovery, including details on the actual design of the NBCs and the related accounting treatment. That discussion should take place in Phase 1 via testimony and briefing, as discussed in more detail below.

Importantly, to the degree the Commission decides to extend the life of DCP, such extension would generate both additional costs and benefits.⁷ Those benefits include RA capacity as well as GHG-free energy attributes. Both attributes have value to LSEs and their customers — RA resources help LSEs meet their RA obligations, and GHG-free resources benefit LSEs’ power content labeling. SB 846 delineates where the Commission can consider these attributes, separating what might be called “real-time” attributes, *i.e.*, those existing during a year in which the plant will operate, from long-term planning. For example, the Commission can allocate the RA capacity from DCP in “real time” to LSEs whose customers pay for that plant to help those LSEs meet their year-ahead RA obligations. However, the Commission cannot consider DCP’s capacity and output in planning for the State’s long-term policy goals, including the goal “that eligible renewable energy resources and zero-carbon resources supply 100 percent of all retail

⁵ Cal Pub. Utils. Code § 712.8(f)(5), (f)(6), (g), (h)(2), (i), and (u).

⁶ Cal Pub. Utils. Code § 712.8(f)(5).

⁷ See Cal. Pub. Resources Code § 25548(d) (“It is the intent of the Legislature that the extension of the Diablo Canyon powerplant **benefit California’s electric customers . . .**” (emphasis added)).

sales of electricity” for end-use customers by December 31, 2045.⁸ The interplay between these two concepts will be a key consideration over the course of this proceeding regarding how long DCPD should remain open. If it is shown DCPD is needed because existing and planned procurement excluding DCPD will fall short, it could be argued that DCPD should continue to operate. If DCPD continues to operate, the customers paying the NBCs tied to extended operations should be allocated their fair share of DCPD attributes.⁹

While the scoping issues for Phase 1 include cost recovery proposals, those issues make no mention of benefits. The Commission should not authorize any new cost recovery mechanism in Phase 1 without concurrently addressing how the benefits of extended operations will be allocated between the customers (and LSEs) paying for extended operations. There are at least two reasons why the allocation of benefits must be addressed in Phase 1 of this proceeding. *One*, costs and benefits are two sides of the same coin. The Commission risks leaving non-PG&E customers without adequate or fair opportunities to realize the value they are paying for if one or more NBCs were established without determining how those customers will be allocated the full benefits of DCPD (including RA and GHG-free attributes). This would constitute a shifting of costs from PG&E’s bundled service customers onto the customers of all other jurisdictional LSEs.

Two, the RA Program timeline requires the Commission to address the allocation of benefits associated with DCPD extended operations during Phase 1 of this proceeding. LSEs submit annual filings on October 31 demonstrating their System, Local and Flexible RA procurement for the coming compliance year. That means LSEs — including CCAs — will make their RA showings for the 2025 compliance year by October 31, 2024. In order for an LSE to

⁸ See Cal. Pub. Utils. Code § 454.53(a) and (b)(5).

⁹ See Cal. Pub. Utils. Code § 712.8(q) (“To the extent that the Commission decides to allocate any benefits or attributes from extended operations at the Diablo Canyon powerplant, the commission may consider the higher cost to customers in the operator’s service area.”).

timely procure the RA resources necessary to meet its compliance obligations, it must know the RA it will be allocated from DCPD (if any) several months in advance of making its RA showing, and ideally no later than July. Thus, in order to ensure that all LSEs have the information they need to procure necessary RA and make timely RA showings for the 2025 compliance year, the Commission must resolve the allocation of RA from extended operations at DCPD by no later than early 2024. The Commission can meet this timeline by addressing this issue in Phase 1, which will conclude by the end of 2023.

Therefore, the Commission should amend the scoping issues for Phase 1 of this proceeding and specifically include the following issue: “How should the benefits of extended operations at DCPD, including resource adequacy (RA) and GHG-free attributes, be allocated to and among the load serving entities and customers paying for extended operations?”

B. Whether The Commission Addresses The Annual Process for The Review and Approval of DCPD Extended Operations Costs in Phase 1 or Phase 2 of This Proceeding, The Commission Must Establish That Process by Early 2024

The OIR states that Phase 2 of this proceeding will establish “new processes to forecast and true-up DCPD extended operations costs and market revenues; recover associated extended operations and net costs and/or net revenues; and verify, at the conclusion of the extended operations, that PG&E’s compensation was limited to the terms set forth in SB 846.”¹⁰ The OIR further states “[i]t is the Commission’s intent to resolve the full proceeding within 36 months of the date the rulemaking is adopted.”¹¹

CalCCA does not object to the Commission deferring the establishment of a process for extended operations cost review, recovery, and approval to a Phase 2 of this proceeding. The most

¹⁰ OIR at 8.

¹¹ *Id.* at 9.

straightforward approach may be to fold that forecast process into PG&E's annual Energy Resource Recovery Account (ERRA) forecast case and any need to review recorded entries into the utility's ERRA compliance case. However, the Commission should not wait 36 months to establish that process.

DCPP Unit 1 is licensed to operate until November 2, 2024, and DCPP Unit 2 is licensed to operate until August 26, 2025. The Commission will need to establish rates used to recover the costs of extended operations *before* extended operations at Unit 1 commence in November 2024 (to the extent the Commission extends the life of DCPP in this proceeding) since those rates have a forecast component.¹² Working backwards from November 2024, the Commission must establish the cost review and approval process no later than early 2024¹³ in order to allow sufficient time for PG&E to present forecasted extended operations costs and revenues. This timeline also allows for the Commission and interested parties to review those forecasted costs and revenues and for the Commission to approve rates that go into effect reasonably close to the time that the relevant extended operations costs are incurred. For these reasons, the Commission should either accelerate Phase 2 or add this issue to the scope of Phase 1.

IV. NEED FOR HEARING

The OIR anticipates “many of the Phase 1 issues in this proceeding can be addressed by filed comments, public meetings, and/or workshops” and, on that basis, determines that no evidentiary hearings will be needed.¹⁴ The issues within the scope of Phase 1, however, are fact-intensive and potentially contentious issues that may require both the submission of pre-filed testimony as well an evidentiary hearing, including cross examination of witnesses. They include the establishment of

¹² See Cal. Pub. Utils. Code § 712.8(h)(1).

¹³ Whether the Commission establishes a process like the ERRA cases or determines that the forecast and true-up of DCPP extended operations costs and market revenues should occur in ERRA forecast cases.

¹⁴ OIR at 9.

one or more cost recovery mechanisms and the escalation factors for those mechanisms¹⁵ and should include the allocation of attributes associated with extended operations at DCP. The Commission should set a date for an evidentiary hearing at this time to not preclude the opportunity for record development through witness examination. Should a Rule 13.9 meet-and-confer process show no issues of fact remain after testimony, hearings can be cancelled.

V. PROCEDURAL SCHEDULE

Under the tentative Phase 1 Schedule provided in Appendix A to the OIR, PG&E would file one or more proposals for new cost recovery mechanisms in April 2023; intervenors would comment on those proposals a month later; and a Proposed Decision on new cost recovery mechanisms would be issued between June and August of 2023.¹⁶ The Commission would resolve Phase 1 by December 31, 2023, and resolve Phase 2 within 36 months of the date the rulemaking was adopted.¹⁷

There are three issues with the proposed procedural schedule. *First*, as discussed above, the Commission must establish a process for the forecast and true-up of DCP extended operations costs by early 2024 for forecast rates to go into effect reasonably close to the time that PG&E begins incurring the relevant costs. As such, the Commission must either bring that issue within scope in Phase 1 or accelerate Phase 2.

Second, since this proceeding is a rulemaking, and not a PG&E application, all parties should have the option of filing concurrent opening testimony addressing issues tied to any new cost recovery mechanisms, and concurrent reply testimony responding to proposals advanced in opening testimony. This approach would not only advance fairness — by giving all parties an

¹⁵ Cal. Pub. Utils. Code § 712.8(f)(5).

¹⁶ OIR at Appendix-4 – Appendix-5.

¹⁷ *Id.* at 9.

equal opportunity to advance new proposals — but would also be administratively efficient because it would allow all parties (including PG&E) an opportunity to respond to intervenor cost recovery proposals without requiring a third round of testimony.

Third, while CalCCA supports the resolution of Phase 1 by the end of 2023, the procedural schedule should allot more than one month between opening and reply testimony. A modest extension would help parties conduct discovery and develop a more complete record with respect to both the establishment of cost recovery mechanisms and the allocation of associated attributes (as discussed above), without requiring the Commission to delay the resolution of Phase 1. The following scheduling proposal achieves these aims:

Event	OIR Date	Alternative Date
Prehearing Conference	Q1 2023	
Public Participation Hearings	TBD	
PG&E Files a Copy of its License Renewal Application, Status Updates on NRC’s License Renewal and any Changes to the Status of the Loan Provided for Under SB 846	15 days from submission of license renewal application to the NRC; 15 days from the NRC’s final determination concerning license renewal and/or any changes in the SB 846 Loan Agreement, or September 1, 2023, at the latest.	
PG&E Files Proposal(s) for New Cost Agreements/Mechanisms Pursuant to Pub. Util. Code § 712.8(1)(2) (as needed)	April 2023	
<u>Concurrent Opening Testimony Detailing Proposals related to New Cost Agreements/Mechanisms Pursuant to Pub. Util. Code § 712.8(1)(2)</u>		<u>Early May 2023</u>
Ruling Issued Noticing the CEC’s 2024-2030 Electric Reliability Determination as well as the December 2022 and March 2023 Joint Reliability Planning Assessments	April 2023	
Intervenor Comments on the CEC’s 2024-2030 Electric Reliability Determination as well as the December 2022 and March	May 2023	

Event	OIR Date	Alternative Date
2023 Joint Reliability Planning Assessments		
Intervenor Comments on PG&E's Proposal(s) for New Cost Agreements/Mechanisms (as needed)	May 2023	
<u>Concurrent Rebuttal Testimony on Proposal(s) for New Cost Agreements/Mechanisms</u>		<u>Late June 2023</u>
<u>Evidentiary Hearings (if needed, following Rule 13.9 Meet and Confer in mid-July) on Proposal(s) for New Cost Agreements/Mechanisms</u>		<u>Late July 2023</u>
<u>Opening Briefs on Proposal(s) for New Cost Agreements/Mechanisms</u>		<u>Mid-August 2023</u>
<u>Reply Briefs on Proposal(s) for New Cost Agreements/Mechanisms</u>		<u>Late August 2023</u>
Proposed Decision on New Cost Agreements/Mechanisms (as needed)	June – August 2023	[Replaced by October – November Proposed Decision originally proposed in OIR, below]
Ruling Issued Noticing Fact Finding Reports Approved at the DCISC's February 15-16 and June 28-29, 2023 Public Meetings	June 2023	
Ruling Issued Noticing Fact Finding Reports Approved at the DCISC's February 15-16 and June 28-29, 2023 Public Meetings	June 2023	
Comments on Fact Finding Reports Approved at the DCISC's February 15-16 and June 28-29, 2023 Public Meetings	July 2023	
Reply Comments on Fact Finding Reports Approved at the DCISC's February 15-16 and June 28-29, 2023 Public Meetings	August 2023	
Ruling Issued Noticing the CEC's Diablo Canyon Cost-Effectiveness Evaluation	August 2023	
Ruling Issued Noticing Fact Finding Reports Approved at the DCISC's September 13-14, 2023 Public Meeting	September 2023	
Comments on the CEC's Diablo Canyon Cost- Effectiveness Evaluation, NRC License Status, and Fact Finding Reports Approved at the DCISC's September 13-14, 2023 Public Meeting	September 2023	
Proposed Decision	October – November 2023	

VI. COMMUNICATIONS AND SERVICE

CalCCA consents to “email only” service and requests the following individuals be added to the service list for R.23-01-007 on behalf of CalCCA:

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VII. CONCLUSION

CalCCA appreciates this opportunity to provide these Verified Comments on the OIR and objections to the proposed scoping issues and schedule. For the reasons described in these comments, CalCCA requests that the Commission modify the scoping issues and procedural schedule consistent with CalCCA's recommendations.

Respectfully submitted,

A handwritten signature in blue ink that reads "Evelyn Kahl".

Evelyn Kahl
General Counsel and Director of Policy
CALIFORNIA COMMUNITY CHOICE
ASSOCIATION

February 21, 2023

VERIFICATION OF BRIAN DICKMAN

Pursuant to Rule 1.11 of the California Public Utilities Commission's Rules of Practice and Procedure, and page 10 of the Order Instituting Rulemaking 23-01-007 (OIR) requiring that "[a]ll comments on the proposed implementation framework that contain factual assertions must be verified," I, Brian Dickman, declare as follows:

I am Partner at NewGen Strategies & Solutions, LLC, and the expert witness supporting the California Community Choice Association (CalCCA) in the OIR, and am authorized to make this verification on CalCCA's behalf.

The statements in the foregoing document are true of my own knowledge except as to matters that are stated on information and belief, and as to those matters, I believe them to be true.

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

Executed on February 16, 2023 at Vancouver, Washington.



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