

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



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R2301007

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

Rulemaking 23-01-007

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S
REQUEST FOR EVIDENTIARY HEARINGS AND LEGAL BRIEFING**

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August 9, 2023

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SUMMARY OF RECOMMENDATIONS

- The California Public Utilities Commission (Commission) should set Phase 1 Track 2 of this matter for evidentiary hearing.
- The Commission should allow parties to file opening and reply briefs on Phase 1 Track 2 issues on the dates specified in the Assigned Commissioner's April 6, 2023 Scoping Memo and Ruling.

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

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

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**CALIFORNIA COMMUNITY CHOICE ASSOCIATION’S REQUEST FOR
EVIDENTIARY HEARINGS AND LEGAL BRIEFING**

The Assigned Commissioner’s April 6 Scoping Memo and Ruling directs parties to request evidentiary hearings and/or briefs in Phase 1 Track 2 of this proceeding by August 9, 2023. Accordingly, California Community Choice Association¹ (CalCCA) submits this request for both evidentiary hearings and briefs in Rulemaking (R.) 23-01-007, *Implementing Senate Bill 846 Concerning Potential Extension of Diablo Canyon Power Plant Operations*.

As CalCCA explains below, certain disputed facts in this proceeding would benefit from further record development through an evidentiary hearing. While CalCCA has made efforts to narrow those disputed facts, and will continue to make efforts to narrow those disputed facts before the evidentiary hearing, CalCCA does not believe a meet and confer process or other dispute resolution process will be sufficient to resolve the facts in dispute. CalCCA also explains below that certain legal issues in this proceeding, including legal issues raised for the first time in parties’ rebuttal testimony, would benefit from argument in briefs. CalCCA therefore believes that both

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.

evidentiary hearings and legal briefing would assist the Commission in arriving at a decision in Phase 1 Track 2 of this proceeding.

I. REQUEST FOR HEARING

As directed in the Assigned Commissioner’s April 6 Scoping Memo and Ruling, CalCCA provides below: 1) specific facts in the case that are in dispute; 2) prior efforts made to narrow the facts in dispute, and 3) whether a meet and confer process and/or other dispute resolution alternatives would be able to resolve the facts in dispute.

A. Parties Dispute Numerous Facts Material to the Case’s Resolution.

The parties August 8, 2023 Joint Statement² filed in this proceeding illustrates that most of the scoping issues in Phase 1 Track 2 of this proceeding remain disputed. Those include the following issues, on which CalCCA has submitted testimony in this proceeding:

3. If the Commission directs and authorizes extended operations at Diablo Canyon, what are the new processes to authorize annual recovery of all reasonable Diablo Canyon extended operations costs and expenses on a forecast basis, including allocation of forecast costs among Commission-jurisdictional load-serving entities.
4. Whether additional cost recovery mechanisms, agreements, issues, plans, and/or orders are needed prior to the current retirement dates for Diablo Canyon Units 1 and 2 (i.e. in 2024 and 2025, respectively).
5. Whether and how the benefits of extended operations, including resource adequacy and greenhouse gas-free attributes, should be allocated among the load-serving entities (LSEs) and customers paying for extended operations.

Within those broad scoping issues, CalCCA has identified the following list of specific facts in this case that remain in dispute:

1. The degree to which allocating resource adequacy (RA) capacity from Diablo Canyon Power Plant (DCPP) will cause incremental costs or obligations for Pacific Gas and Electric Company (PG&E) relative to its current costs or obligations (under Scoping Issue 5);

² R.23-01-007, Joint Statement Following Rule 13.9 Meet and Confer by Pacific Gas and Electric Company (U 39 E) on Order Instituting Rulemaking to Consider Potential Extension of Diablo Canyon Power Plant Operations in Accordance with Senate Bill 846 at 3-6 (Aug. 8, 2023) (Joint Statement).

2. Whether allocating RA capacity from DCPD eliminates the incentive for load serving entities (LSEs) to procure new resources or increases the potential for existing resources to be retired and exit the market (under Scoping Issue 5);
3. Whether DCPD RA capacity should be allocated during months when there is a known/foreseeable maintenance outage (under scoping issue 5);
4. Whether allocating RA based on “12 Coincidental Peak” (12CP) or load share would most accurately convey the benefits of DCPD (under scoping issue 5);
5. Whether allocating greenhouse gas-free (GHG-free) energy attributes from DCPD's extended operations would impact LSEs' ability or incentive to meet the state's long-term decarbonization goals (under scoping issue 5);
6. Whether allocating GHG-free energy attributes from DCPD's extended operations would impact the pace at which LSEs bring clean energy resources online (under scoping issue 5);
7. The magnitude of any incremental costs and administrative obligations caused by the allocation of GHG-free energy attributes from DCPD to all Commission-jurisdictional LSEs, relative to the costs associated with PG&E's existing interim allocation process (under scoping issue 5); and
8. Whether allocating the costs of DCPD extended operations on 12CP or load share is more accurate (under scoping issues 3 and 4).

CalCCA believes that a half-day hearing (as opposed to the three days blocked for evidentiary hearings in the Assigned Commissioner's Scoping Ruling) could be sufficient to address the disputed issues above.

B. Prior Efforts Have Been Made and Will Continue to Be Made to Narrow the Facts in Dispute.

CalCCA attended and participated in a Rule 13.9 Meet and Confer on August 7, 2023.³

Among other things, the purpose of that Meet and Confer was to make efforts to narrow the facts in dispute.⁴ Following a discussion, parties determined it was infeasible to narrow disputed facts

³ See Joint Statement at 1.

⁴ *Id.* at 5.

at that time, given the expedited timeline and range of disputes in the proceeding.⁵ CalCCA will continue to make efforts to narrow the remaining disputed facts in this proceeding, including by meeting and conferring with the parties, and by issuing discovery and pursuing stipulations, to the extent feasible.

C. A Meet and Confer Process and/or Other Dispute Resolution Alternatives Are Unlikely to Resolve All Material Facts in Dispute.

The disputed issues identified above, however, are material, and based on the testimony submitted by parties in this proceeding to date, the gap between the parties on those issues is substantial. Moreover, the timeline in this proceeding is constrained by the statutory requirement that the Commission must establish new retirement dates for DCPD by December 31, 2023.⁶ Therefore, even if a meet and confer process and/or other dispute resolution alternative could resolve the facts in dispute, CalCCA does not believe that such a process is feasible under the timeline of this proceeding.

II. REQUEST FOR LEGAL BRIEFING

At least one legal issue in Phase 1 Track 2 of this proceeding requires briefing: *Whether allocating RA and GHG attributes contravenes or complies with the letter and spirit of SB 846 and other State law?* That legal issue is directly relevant to Phase 1 Track 2 scoping issue 5: “Whether and how the benefits of extended operations including resource adequacy and greenhouse gas-free attributes, should be allocated among the load-serving entities (LSEs) and customers paying for extended operations.”

While several parties have discussed or alluded to their legal positions in testimony, briefing is the most appropriate avenue for parties to make arguments on legal issues, including

⁵ *Id.*

⁶ Cal. Pub. Util. Code § 712.8(c)(2)(A).

the legal issue it identifies above. In fact, certain parties raised legal arguments in their final round of testimony,⁷ meaning legal briefing is the *only* avenue for CalCCA to respond to those legal arguments. CalCCA therefore requests the Commission adopt the dates for opening and reply briefs listed in the Assigned Commissioner’s Scoping Memo and Ruling (September 15, 2023 for opening briefs and September 29, 2023 for reply briefs).

III. CONCLUSION

For the reasons described herein, CalCCA respectfully requests the Commission set this matter for evidentiary hearing and allow the parties the opportunity to file opening and reply briefs on the schedule outlined in the Assigned Commissioner’s April 6 Scoping Memo and Ruling.

Respectfully submitted,



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August 9, 2023

⁷ See, e.g. R.23-01-007, Prepared Rebuttal Testimony on behalf of the Alliance for Nuclear Responsibility of John Geesman at 2-5 (Aug. 28, 2023) (opining on the correct interpretation of, and legislative intent behind, SB 846).