

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



FILED

03/08/24

02:08 PM

R2301007

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

Rulemaking 23-01-007

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S REPLY
COMMENTS ON PHASE 2 PRELIMINARY SCOPE**

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March 8, 2024

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SUMMARY OF RECOMMENDATIONS

- The California Public Utilities Commission (Commission) should not allow parties to re-litigate the allocation of costs and benefits associated with Diablo Canyon Nuclear Power Plant’s (DCPP) extended operations in Phase 2 of this rulemaking.
- The Commission should not consolidate Phase 2 of this rulemaking with Pacific Gas and Electric Company’s (PG&E) Diablo Canyon Extended Operations Cost Forecast application (Application).
- The Commission should retain the option of resolving legal and policy disputes arising in PG&E’s Application in Phase 2 of this rulemaking.
- The Commission should allow parties to make proposals related to PG&E’s use of surplus performance-based fees for calendar years following 2024 in Phase 2 of this rulemaking.

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION’S REPLY
COMMENTS ON PHASE 2 PRELIMINARY SCOPE**

The California Community Choice Association¹ (CalCCA) submits these Reply Comments pursuant to the *Administrative Law Judge’s Ruling Seeking Comments on Phase 2 Preliminary Scope*² (Ruling), dated February 7, 2024.

Many parties make procedurally inappropriate proposals that would unnecessarily expand the scope of both Phase 2 of this proceeding and PG&E’s Extended Operations Cost Forecast Application (Application). The parties should not be allowed to re-litigate the allocation of costs and benefits associated with DCCP’s extended operations in Phase 2 of this proceeding; an extensive record in Phase 1 on those issues led to a decision signed a little over *two months* ago. No facts or law have changed justifying such a revisit. The Commission also should not consolidate Phase 2 with PG&E’s Application. That suggestion ignores the important distinction between a rulemaking and an application, delaying what must be an expedited application in order for rates to be set by January 1, 2025. Resolution of the Application will already require substantial interpretation of the prior decision and the resolution of conflicts arising from the unforeseen gaps in that document, as PG&E and parties put numbers to words in order to set rates. Lastly, The Utility Reform Network’s (TURN) suggestion to stay true to Decision (D.) 23-12-036 should be adopted. The Commission should allow parties to make proposals related to PG&E’s use of surplus performance-based fees for calendar years following 2024 in Phase 2.

I. THE COMMISSION SHOULD NOT ALLOW PARTIES TO RELITIGATE THE ALLOCATION OF COSTS AND BENEFITS ASSOCIATED WITH DCCP’S EXTENDED OPERATIONS IN PHASE 2

PG&E, the Coalition of California Utility Employees (CUE), and Small Business Utility Advocates (SBUA) each recommend the Commission revisit issues already addressed extensively in Phase 1, regarding the allocation of the costs and benefits of extended operations at DCCP. PG&E and CUE recommend the Commission consider changes to the allocation of DCCP’s attributes to address the application of Section 712.8(q) of the Public Utilities Code – which permits the Commission to

¹ California Community Choice Association represents the interests of 24 community choice electricity providers in California, *see 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*, Rulemaking (R.) 23-01-007 (Feb. 21, 2024), footnote 1: <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M502/K537/502537834.PDF>.

² *Administrative Law Judge’s Ruling Seeking Comments on Phase 2 Preliminary Scope*, R.23-01-007 (Feb. 7, 2024): <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M524/K929/524929175.PDF>.

“consider the higher cost to customers in [PG&E’s] service area” when allocating DCP’s attributes.³ SBUA recommends the Commission “review” its prior decision to allocate the costs and benefits of DCP’s extended operations based on a methodology that mirrors the Cost Allocation Mechanism (CAM) methodology.⁴ These issues were recently litigated in Phase 1 and resolved by D.23-12-036.

Cost and benefit allocation issues were squarely within Phase 1 Scoping Issues 3 and 5. Phase 1 Scoping Issue 3 asks: 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?⁵ Phase 1 Scoping Issue 5 asks 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.⁶ Parties—including PG&E, CUE and SBUA—therefore, had an opportunity to advance cost and benefit allocation proposals in Phase 1.

Indeed, several parties—including PG&E⁷ and CalCCA⁸—submitted substantial testimony on both cost and benefit allocation issues. CalCCA witness Dickman, whose testimony makes specific cost and benefit allocation proposals, in fact directly addresses Public Utilities Code section 712.8(q). Mr. Dickman notes CalCCA’s interest in finding a fair way for the Commission to act on section 712.8 (q). Mr. Dickman observes his attribute allocation proposal achieves a fair result because customers of LSEs in PG&E’s service territory (unlike customers of LSEs *outside* of PG&E’s service territory) benefit from surplus wholesale market revenue and the return of excess funds paid into the liquidated damages

³ Opening Comments of Pacific Gas and Electric Company (U 39 E) on Administrative Law Judge’s Ruling Seeking Comments on Phase 2 Preliminary Scope at 4-5 (Feb. 28, 2024); *see also* Comments of the Coalition of California Utility Employees on Phase 2 Preliminary Scope at 4 (Feb. 28, 2024).

⁴ Opening Comments of Small Business Utility Advocates (SBUA) on ALJ’s Ruling Seeking Comments on Phase 2 Preliminary Scope at 5 (Feb. 28, 2024). SBUA wrongly suggests the allocation of costs and attributes based on a methodology that mirrors CAM “appear[s] to conflict with section 712.8(l)(1) of the Public Utilities Code. SBUA is incorrect. Section 712.8(l)(1) requires that recovery of certain non-bypassable DCP costs from customers shall be based on the customer’s gross consumption of electricity. Section 712.8(l)(1) says nothing about the manner in which DCP’s net costs must be allocated to IOU service territories or the LSEs in each IOU service territory.

⁵ *See* Assigned Commissioner’s Scoping Memo and Ruling at 5-6 (Apr. 6, 2023) (emphasis added).

⁶ *Id.*

⁷ *See* PG&E-02 at 5-1 to 5-3 and PG&E-04 at 2-17 to 2-26 (each addressing attribute allocation).

⁸ *See* CalCCA-01 at 3-20, CalCCA-02 and CalCCA-03 at 6-15 (each addressing attribute allocation); CalCCA-01 at 30-31 (addressing cost allocation).

balancing account by all customers.⁹ Mr. Dickman’s testimony specifically illustrates the net annual costs and revenues recovered from all customers versus those charged only to customers of LSEs in PG&E’s service territory.¹⁰

Importantly, D.23-12-036 conclusively resolves the allocation of costs and benefits associated with DCPP’s extended operations and adopts Mr. Dickman’s proposed allocation methodologies. More specifically, it directs the allocation of DCPP’s extended operations costs and resource adequacy (RA) benefits to investor-owned utilities (IOU) based on each IOU’s share of 12-month coincident peak demand, and to LSEs within each IOU’s service territory based on a process that mirrors the CAM, as Mr. Dickman’s testimony recommends.¹¹

To the extent PG&E, CUE or SBUA opposes the manner in which D.23-12-036 resolves the allocation of extended operations costs or benefits, it should have filed an application for rehearing or, in PG&E’s case, included the issue in the application for rehearing it did file.¹² Moreover, none of the relevant facts or law have changed since the issuance of D.23-12-036 and, if they had, a petition for modification would be the appropriate procedural vehicle. Requiring parties to relitigate cost or benefit allocation issues in Phase 2, therefore, is not only procedurally improper but would also waste both party and Commission resources. The Commission should not adopt PG&E, CUE, or SBUA’s scoping recommendation.

II. THE COMMISSION SHOULD NOT CONSOLIDATE PHASE 2 WITH PG&E’S APPLICATION

The Alliance for Nuclear Responsibility (A4NR) recommends the Commission consolidate Phase 2 with PG&E’s anticipated Application.¹³ A4NR’s procedural recommendation is in service of its primary scoping recommendation: that the Commission consider, in Phase 2, PG&E’s use of surplus performance-based fees in years beyond 2024.¹⁴ According to A4NR, the Commission cannot evaluate the reasonableness of continuing D.23-12-036’s approach to surplus performance fees beyond 2024

⁹ CalCCA-01 at 27-29.

¹⁰ *Id.* at 29.

¹¹ D.23-12-036, Conclusions of Law 28, 29, 30, 34, 35, 38 and 42; Ordering Paragraphs 7, 9 and 10.

¹² PG&E’s Application for Rehearing of D.23-12-036 filed on January 16, 2024 does not contest that Decision’s resolution of cost or benefit allocation issues. Neither CUE nor SBUA filed an Application for Rehearing of D.23-12-036.

¹³ A4NR Opening Comments on Phase 2 Issues at 3 (Feb. 28, 2024).

¹⁴ *Id.* CalCCA addresses this scoping recommendation in Section III, below.

without a clear understanding of the forecasted costs of extended operations at DCPD through 2030, which PG&E is required to provide as a part of its Application.¹⁵

The Commission should not consolidate Phase 2 with PG&E's Application. The Application will involve several complicated issues, including but not limited to a review of PG&E's forecasted costs and revenues associated with DCPD extended operations, a review of the impact of DCPD's extended operations on PG&E's common costs, and a review of PG&E's allocation of DCPD extended operations costs and benefits among the IOUs.¹⁶ This year, the parties (and the Commission) will attempt to complete each of those tasks for the first time. Completing each of those tasks in eight months¹⁷ will be a challenge and a learning process. Adding Phase 2 legal and policy issues to that compressed timeline would be untenable, let alone inappropriate for an application proceeding (as opposed to a rulemaking). Indeed, rather than consolidating Phase 2 of this rulemaking with the Application, the Commission should adopt TURN's recommendation and retain the option of shifting legal and policy disputes arising in PG&E's Application over to Phase 2 of this rulemaking.¹⁸ To the extent a review of PG&E's use of surplus performance-based fees for calendar years beyond 2024 requires data filed in PG&E's Application, the Commission should direct PG&E to make that data available in Phase 2.

III. THE COMMISSION SHOULD ALLOW PARTIES TO MAKE PROPOSALS RELATED TO PG&E'S USE OF SURPLUS PERFORMANCE-BASED FEES FOR CALENDAR YEARS FOLLOWING 2024 IN PHASE 2

PG&E recommends the Commission eliminate preliminary scoping issue 3 because it will seek to address the process for submittal and review of its annual performance-based fee compensation report and spending plan as a part of a forthcoming Application.¹⁹ TURN, however, recommends the Commission expand preliminary scoping issue 3 and allow parties to address issues relating to PG&E's annual compensation report and spending plan beyond the process for submittal and review.²⁰ Specifically, TURN recommends the Commission allow parties to make recommendations related to

¹⁵ D.23-12-036 at 59.

¹⁶ *Id.* at 103-104.

¹⁷ D.23-12-036 approves PG&E's proposed Energy Resource Recovery Account-like process to authorize DCPD extended operations costs. Under that proposal, PG&E will make its first Forecast Application filing on March 29, 2024, and will request a Commission decision by the last business meeting in November 2024. D.23-12-036 at 102-104.

¹⁸ TURN Opening Comments at 2 (Feb. 28, 2024).

¹⁹ PG&E Opening Comments at 4 (Feb. 28, 2024).

²⁰ TURN Opening Comments at 2 (Feb. 28, 2024).

PG&E’s use of surplus performance-based fees in years beyond 2024.²¹ A4NR makes the same recommendation.²²

CalCCA agrees with TURN and A4NR. While the Commission should not allow parties to relitigate issues that were resolved in Phase 1, D.23-12-036 specifically recognizes that the scope of Phase 1 was limited to the use of surplus performance-based fees in 2024, and therefore states “parties will be afforded an opportunity in Phase 2 of this proceeding to comment on whether any changes should be made on the use of surplus performance-based fees for the calendar years following 2024.”²³ Moreover, the Commission’s consideration of PG&E’s use of surplus performance-based fees in Phase 2 could build on the experience gained from PG&E’s use of surplus performance-based fees in 2024 consistent with D.23-12-036.

The Commission should therefore adopt TURN’s recommendation and permit parties to make recommendations aimed at ensuring that PG&E’s proposed spending benefits *all* customers paying for DCP, not just PG&E’s bundled customers or PG&E’s shareholders. For the same reasons, the Commission should reject PG&E’s recommendation that preliminary scoping issue 3 be removed from Phase 2.

IV. CONCLUSION

CalCCA respectfully requests the Commission adopt its recommendations for the reasons described in these comments.

Respectfully submitted,



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March 8, 2024

²¹ *Id.*

²² A4NR Opening Comments at 1-2 (Feb. 28, 2024).

²³ D.23-12-036 at 115-116.