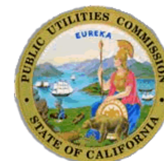

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Implementing Senate Bill 846 Concerning Potential Extension of Diablo Canyon Power Plant Operations.	Rulemaking 23-01-007

OPENING BRIEF OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)

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OPENING BRIEF OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)

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SUMMARY INDEX OF RECOMMENDATIONS

Pursuant to Rule 13.12 of the California Public Utilities Commission's (Commission's or CPUC's) Rules of Practice and Procedure, Southern California Edison Company (SCE) provides the following summary index of recommendations in support of its opening brief. In particular, if the Commission determines that operations at Diablo Canyon Nuclear Power Plant (DCPP or Diablo Canyon) should be extended beyond the current retirement dates:

- The Commission should adopt Pacific Gas and Electric Company's (PG&E's) cost recovery process proposal.
- The Commission should approve PG&E's rate design and the use of a single equal-cents-per-kilowatt-hour rate for the DCPP nonbypassable charge (NBC).
- The Commission should approve the DCPP NBC as a separate line item on customer bills and the establishment of investor-owned utility (IOU)-specific memorandum accounts to track any incremental costs incurred by the IOU related to the implementation, billing, and communication of the new DCPP NBC.
- The Commission should adopt PG&E's proposal for a daily remittance schedule for the DCPP NBC, with flexibility to submit some data reporting on a monthly basis.
- The Commission should allocate the resource adequacy (RA) benefits of DCPP during any extended operations period to all load-serving entities (LSEs) whose customers are paying for extended operations.
- The Commission should adopt the current approach used for allocating the RA benefits of Cost Allocation Mechanism resources for allocating DCPP's RA benefits among LSEs.
- All LSEs whose customers are paying for extended operations should be allocated greenhouse gas-free attributes from DCPP for use on their power content labels.
- DCPP should continue to count for all purposes during extended operations except for future resource planning for new resources such as Integrated Resource Planning

filings, resource stacks, portfolios, and system plans and counting toward the state's zero-carbon resource goals.

- Any surplus ratepayer funds PG&E receives for DCPP should be used to reduce the costs of extended operations and minimize rate impacts on all customers.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Implementing Senate Bill 846 Concerning Potential Extension of Diablo Canyon Power Plant Operations.	Rulemaking 23-01-007

OPENING BRIEF OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)

Pursuant to Rule 13.12 of the California Public Utilities Commission's (Commission's or CPUC's) Rules of Practice and Procedure, the April 6, 2023 Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo), the August 14, 2023 E-mail Ruling Granting Motions to Hold Phase 1: Track 2 Evidentiary Hearings and/or Submit Briefs, and Providing Further Instruction (August 14 E-mail Ruling), and the September 13, 2023 E-Mail Ruling Partially Granting Request to Extend Deadlines in Phase 1: Track 2 of this Proceeding, Southern California Edison Company (SCE) respectfully submits this opening brief.

I.

INTRODUCTION

In accordance with the August 14 E-mail Ruling, SCE's opening brief utilizes a common briefing outline following the Phase 1: Track 2 issues identified in the Scoping Memo. SCE's opening brief does not address all of the Phase 1: Track 2 issues; however, SCE reserves the right to discuss additional issues in its reply brief.

In Section IV of this opening brief, SCE addresses the new processes to authorize annual recovery of all reasonable Diablo Canyon Nuclear Power Plant (DCPP or Diablo Canyon) extended operation costs and expenses on a forecast basis, including allocation of forecast costs among Commission-jurisdictional load-serving entities (LSEs). The Commission should adopt Pacific Gas and Electric Company's (PG&E's) proposal that the annual DCPP Extended

Operations Forecast proceeding mirror the structure of the annual Energy Resource Recovery Account (ERRA) Forecast proceeding.

In Section V of this opening brief, SCE discusses additional cost recovery mechanisms, agreements, plans, and orders needed prior to the current retirement dates for DCPP Units 1 and 2. Specifically, SCE supports PG&E's ratesetting and cost recovery proposals related to the DCPP nonbypassable charge (NBC). Public Utilities Code Section 712.8(l)(1) requires that any DCPP costs the Commission authorizes PG&E to recover in rates shall be recovered on a fully nonbypassable basis from customers of all LSEs subject to the Commission's jurisdiction, except as otherwise provided in this section, with recovery of these costs based on each customer's gross consumption of electricity regardless of a customer's net metering status or purchase of electric energy and service from an electric service provider, community choice aggregator, or other third-party source of electric energy or electricity service. The Commission should approve PG&E's proposal to use a uniform equal-cents-per-kilowatt-hour (kWh) rate design for all LSEs because it provides a simple structure that is implementable and transparent and relies on publicly available information.

SCE also supports the DCPP NBC as a separate line item on customer bills and the establishment of investor-owned utility (IOU)-specific memorandum accounts to track any incremental costs incurred by the IOU related to the implementation, billing, and communication of the new DCPP NBC. Finally, SCE supports PG&E's proposal for a daily remittance schedule for the DCPP NBC but notes that some data reporting should be done on a monthly basis.

In Section VI of this opening brief, SCE addresses whether and how the benefits of extended operations, including resource adequacy (RA) and greenhouse gas (GHG)-free attributes, should be allocated among LSEs and customers paying for extended operations. The Commission should allocate the RA benefits of DCPP during any extended operations period to all LSEs whose customers are paying for extended operations. The costs of DCPP's extended operations will be borne by the customers of all LSEs subject to the Commission's jurisdiction throughout California. The Commission should allocate DCPP's RA benefits, the value of

which is significant, to ensure that customers receive the value they are paying for and to minimize the substantial costs of extended operations. Allocation of DCPP's RA benefits is supported by the language and intent of Senate Bill (SB) 846. In particular, the legislative history of SB 846 explicitly states that while DCPP is excluded from future resource planning during extended operations, "***[t]he exception to this DCPP exclusion is for RA procurement compliance, where DCPP is permitted to count toward LSE obligations as a ratepayer relief measure***."[1] The Commission should adopt the current approach used for allocating the RA benefits of Cost Allocation Mechanism (CAM) resources for allocating DCPP's RA benefits among LSEs.

Similarly, all LSEs whose customers are paying for extended operations should be allocated GHG-free attributes from DCPP for use on their power content labels. The Commission should provide each LSE's allocation based on the LSE's share of prior year retail sales and DCPP's prior year generation. Moreover, DCPP should continue to count for all purposes during extended operations except for future resource planning for new resources such as Integrated Resource Planning (IRP) filings, resource stacks, portfolios, and system plans and counting toward the state's zero-carbon resource goals.

Lastly, in Section VII of this opening brief, SCE discusses whether additional guidance should be provided on the use of any surplus ratepayer funds PG&E receives for DCPP in 2024. SCE recommends that any surplus ratepayer funds be used to reduce the costs of DCPP extended operations and minimize rate impacts on all customers.

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[1] Senate Rules Committee, Office of Senate Floor Analyses, SB 846, September 1, 2022, at 11, at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB846# (emphasis added).

II.

WHETHER OPERATIONS AT DCPP SHOULD BE EXTENDED UNTIL OCTOBER 31, 2029 (UNIT 1) AND OCTOBER 31, 2030 (UNIT 2), OR WHETHER EARLIER RETIREMENT DATES SHOULD BE ESTABLISHED

SCE does not have any comments on these issues at this time.

III.

WHETHER ONE OR MORE PROCESSES SHOULD BE ESTABLISHED TO CONTINUE TO MONITOR THE ASSOCIATED UTILITY RATEPAYER COST FROM, AND RELIABILITY NEED FOR, CONTINUED OPERATIONS AT DCPP

SCE does not have any comments on these issues at this time.

IV.

WHAT ARE THE NEW PROCESSES TO AUTHORIZE ANNUAL RECOVERY OF ALL REASONABLE DCPP EXTENDED OPERATION COSTS AND EXPENSES ON A FORECAST BASIS

A. The Commission Should Adopt PG&E's Cost Recovery Process Proposal

PG&E recommends that the structure of the annual DCPP Extended Operations Forecast proceeding mirror the Commission's long-established structure for the ERRA Forecast proceedings.[2] SCE supports this proposal as resolution of an annual DCPP Extended Operations Forecast proceeding would result in annual rates that go into effect on January 1 of each operational year. In addition, modeling the new proceeding on established processes from the ERRA Forecast proceeding reduces complexity and allows for parties to review the forecasted net costs for each operation year.

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[2] *See* PG&E-02 at 3-1.

SCE supports PG&E's proposal for a final Commission decision by no later than the last Commission meeting date in November.[3] A final decision in November is needed to allow SCE to make a January 1 rate change because SCE requires approximately four weeks to implement a rate change in its billing system when sales adjustments or structural changes are involved.[4] Receiving a final decision at a later date in the year (*i.e.*, the final Commission meeting of the year) would result in SCE being unable to implement the new DCPP NBC rate until on or about March 1, which would delay SCE's ability to remit revenues to PG&E.[5]

SCE also supports the use of a "Fall Update"[6] in October because it may be difficult for an IOU to finalize its load forecast for the following year by the proposed initial application filing each March.[7] The Fall Update allows for the use of the latest available load forecast by PG&E for the calculation of the single equal-cents-per-kWh rate to be used by all IOUs.[8]

V.

WHETHER ADDITIONAL COST RECOVERY MECHANISMS, AGREEMENTS, PLANS, AND/OR ORDERS ARE NEEDED PRIOR TO THE CURRENT RETIREMENT DATES FOR DCPP UNITS 1 AND 2

A. The Commission Should Approve PG&E's Rate Design and the Use of a Single Equal-Cents-Per-kWh Rate

PG&E proposes that the statewide DCPP NBC be an equal-cents-per-kWh rate paid for by all Commission-jurisdictional customers, except that customers in PG&E's service area will pay an additional adder to recover the PG&E-specific Volumetric Performance Fee expense.[9] SCE supports PG&E's proposed approach.

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[3] *See id.* at 3-8-3-10.
[4] *See* SCE-02 at 15.
[5] *See id.*
[6] *See* PG&E-02 at 3-8, 3-10.
[7] *See id.* at 3-2, 3-10.
[8] *See* SCE-02 at 15.
[9] *See* PG&E-02 at 2-6.

California Community Choice Association (CalCCA) and Alliance for Retail Energy Markets (AReM)/Direct Access Customer Coalition (DACC) recommend that DCPP costs and benefits both be allocated to all IOU service areas based on the contribution to the group's combined 12-month coincident peak (12-CP).[10] Although SCE agrees that DCPP's RA benefits should be allocated based on the CAM approach using 12-CP, the number of IOUs involved and the tight timeline each year for the proposed cost recovery process[11] would make it difficult to calculate the DCPP NBC using CalCCA and AReM/DACC's proposed approach. Because the costs are to be divided amongst all Commission-jurisdictional customers, the use of the 12-CP allocator would require that PG&E calculate separate revenue requirements for each IOU and then that revenue requirement would have to be further differentiated by rate class.[12] There are also costs that will be recovered via the DCPP NBC that are not RA-related.[13] In addition, the potential for customer confusion increases as customers who receive electric bills from multiple utilities may question why the rate is higher for one IOU compared to another.[14]

Finally, the use of a single equal-cents-per-kWh rate simplifies the forecasting data that needs to be sent to PG&E. SCE would only need to provide PG&E with its public retail load forecast under PG&E's proposal.[15] A 12-CP allocation would require that the IOUs share confidential load forecasts with PG&E and this reduces the transparency of the rate calculation.[16] For these reasons, SCE strongly recommends that the Commission prioritize simplicity and transparency over exact precision and authorize PG&E to calculate the DCPP NBC using a single equal-cents-per-kWh rate across all Commission-jurisdictional customers.

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[10] *See* CalCCA-01 at 6, 30-31; AReM-02 at 8-11.
[11] *See* PG&E-02 at 3-10.
[12] *See* SCE-02 at 12.
[13] *See id.*
[14] *See id.*
[15] *See id.*
[16] *See id.*

SCE agrees with CalCCA that there should be no floor on the statewide DCPP NBC and that customer overcollections in one year should be returned to customers as an offset to the DCPP NBC in the following year.[17]

B. SCE Supports the DCPP NBC as a Separate Line Item on Customer Bills and the Establishment of a Memorandum Account for IOU-Specific Incremental Costs

To reduce confusion and create transparency for customers, PG&E proposes to present the DCPP NBC as a separate line item on customers' bills.[18] SCE supports the DCPP NBC being a separate line item on customer bills.

Similar to PG&E's proposal,[19] SCE also requests that the Commission approve the establishment of a memorandum account specific to SCE to allow SCE to track any incremental costs associated with the implementation of the DCPP NBC in SCE's billing system and on customers' bills.[20] SCE recommends that the memorandum account be used for any unforeseen DCPP-specific costs that may arise in the future, such as, but not limited to, DCPP NBC customer notification or support costs. The creation of IOU-specific memorandum accounts for incremental costs is practical because it relieves the burden on PG&E to coordinate and include these amounts into their single rate and maintains the reasonableness review of the costs in the specific IOU's ERRA Review, General Rate Case, or other ratemaking application for cost recovery.[21] Lastly, this approach equitably keeps the incremental costs within each IOU's service area as there may be significant differences in costs for each IOU to implement the new DCPP NBC.[22] Thus, SCE recommends the Commission adopt PG&E's proposal for a new

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[17] *See* CalCCA-03 at 18-20.

[18] *See* PG&E-02 at 2-8. PG&E will not immediately be able to utilize a separate line item given its billing system upgrade constraints. *See id.* SCE does not have similar constraints and would implement a separate line item in its billing system for the initial DCPP NBC. *See* SCE-02 at 13.

[19] *See* PG&E-02 at 2-9.

[20] *See* SCE-02 at 13.

[21] Upon reasonableness review, the costs that SCE seeks to recover from customers will be transferred to the distribution sub-account of the SCE's Base Rate Revenue Requirement Balancing Account (BRRBA). *See id.*

[22] *See id.*

separate line item on customers' bills to recover the DCPP NBC and the establishment of IOU-specific memorandum accounts to track incremental costs.

C. SCE Supports PG&E's Remittance Proposal for DCPP Cost Recovery During Extended Operations

PG&E proposes timely remittance of revenues from the DCPP NBC from all IOUs,[23] specifically the use of a daily remittance schedule.[24] SCE supports this proposal because it mirrors SCE's current remittance schedule for its Department of Water Resource (DWR) Wildfire Fund NBC. SCE intends to leverage its existing systems and processes to facilitate the remittances to PG&E.[25] Significant deviations from this may result in increased costs and time for implementation of the DCPP NBC, as well as increased financing costs for PG&E that are ultimately borne by all Commission-jurisdictional customers.[26] To limit complexity and costs, SCE supports PG&E's remittance schedule for the DCPP NBC.

PG&E recommends that daily and monthly reports be provided alongside the remittances.[27] SCE is supportive of this data reporting structure and appreciates PG&E's flexibility and acknowledgement that billed energy kWh data may not be available on a daily basis and could be provided in the monthly reporting.[28] To limit the number of system changes needed and to mirror its current reporting process, SCE would provide the billed energy kWh data on a monthly basis.[29]

SCE suggests a modification to the Servicing Order included as Attachment A to PG&E-02 to change the language throughout to provide that "Operator and Utility agree" rather than

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[23] *See* PG&E-02 at 4-1.
[24] *See id.* at 4-3.
[25] *See* SCE-02 at 14.
[26] *See id.*
[27] *See* PG&E-02 at 4-AtchA-36.
[28] *See id.* ("Utility and Operator agree and understand that Items 2 and 3 cannot be provided on each Utility Business Day due to billing system or other limitations, but that Utility will provide such information in the Monthly Customer Data Report or Monthly Utility Data Report or as otherwise mutually agreed by the Parties.").
[29] *See* SCE-02 at 14.

"Operator agrees, and Utility is ordered." The "Utility is ordered" language was specific to the DWR Wildfire Fund Servicing Order because DWR is not under the Commission's jurisdiction.[30] "Operator and Utility agree" is more appropriate for the DCPP NBC Servicing Order.

VI.

WHETHER AND HOW THE BENFITS OF EXTENDED OPERATIONS, INCLUDING RA AND GHG-FREE ATTRIBUTES, SHOULD BE ALLOCATED AMONG THE LSES AND CUSTOMERS PAYING FOR EXTENDED OPERATIONS

A. The Commission Should Allocate DCPP's RA Benefits to All LSEs Whose Customers Pay for Extended Operations

If the Commission determines that operations at DCPP should be extended, the Commission should allocate DCPP's RA benefits among all LSEs whose customers pay for extended operations for the reasons discussed in the testimony of SCE, CalCCA, AReM/DACC, and Public Advocates Office at the California Public Utilities Commission (Cal Advocates).[31]

1. The Allocation of DCPP's RA Benefits to All LSEs is Supported by the Language and Intent of SB 846

To protect California against significant uncertainty in future demand resulting from the state's GHG reduction efforts involving electrification and regional climate-related weather phenomenon, and to address the risk that currently ordered procurement will be insufficient or may be delayed, SB 846 provides for the potential extension of operations at DCPP Units 1 and 2 beyond the current retirement dates.[32] If the Commission decides to extend operations at DCPP,

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[30] *See id.* at 14-15.

[31] *See* SCE-01 at 3-13; SCE-02 at 3-9; CalCCA-01 at 3-17; CalCCA-03 at 6-11; AReM-01 at 2-7; AReM-02 at 2-7; CalPA-01 at 3-7.

[32] *See* Cal. Pub. Util. Code §§ 712.8(c)(1)-(2) and (q). DCPP Unit 1 may be extended until October 31, 2029 and Unit 2 may be extended until October 31, 2030.

the cost of such extended operations will be recovered on a nonbypassable basis from customers of all LSEs subject to the Commission's jurisdiction in the state.[33] All LSE customers will pay for most extended operations costs, including capital and operations and maintenance expenses, incremental decommissioning costs resulting from license renewal applications or license renewals, a $50 million fixed payment per year for each unit (subject to adjustment), funding of a liquidated damages balancing account up to $300 million to cover power replacement costs (even in instances of PG&E imprudence), and a volumetric management fee of $6.50 per megawatt-hour (MWh) generated by DCPP (subject to adjustment).[34] Customers of LSEs in PG&E's service area will also pay an additional volumetric payment of $6.50 per MWh (subject to adjustment).[35]

In addition to imposing incremental costs, the Legislature recognized that DCPP's extended operations would generate benefits for customers. Public Resources Code Section 25548(d) provides: "***It is the intent of the Legislature that the extension of the Diablo Canyon powerplant benefit California's electric customers***, and if those benefits fail to materialize or costs to operate the plant increase significantly as determined by the Public Utilities Commission, the state will plan for an earlier decommissioning date that also safeguards electrical reliability in the state."[36] Moreover, Public Utilities Code Section 712.8(q) makes clear that the Commission has authority to allocate benefits or attributes from DCPP's extended operations, stating that "***[t]o the extent the commission decides to allocate any benefits or attributes from extended operations of the Diablo Canyon powerplant***, the commission may consider the higher cost to customers in the operator's service area."[37]

During the extended operations period, SB 846 is also clear on the situations where the energy, capacity, and other attributes of DCPP may not be relied upon or counted. "[T]he

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[33] *See* Cal. Pub. Util. Code § 712.8(l)(1).
[34] *See* Cal. Pub. Util. Code §§ 712.8(f)(1), (f)(3)-(f)(6), and (g)-(i) .
[35] *See* Cal. Pub. Util. Code § 712.8(f)(5).
[36] Emphasis added.
[37] Emphasis added.

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."[38] In particular, after their current retirement dates, the Commission and LSEs may not include the energy, capacity, or any attribute from DCPP Units 1 and 2 in their adopted IRPs, IRP portfolios, resource stacks, or preferred system plans.[39] While DCPP's attributes cannot be considered in long-term resource planning for new resources to ensure reliability or meet California's long-term GHG reduction or zero-carbon resource goals during the extended operations period, there is no such prohibition on counting DCPP toward short-term RA compliance requirements, for power content label purposes (as discussed in Section VI.B), or to meet other electric system operational requirements. Given the ease of adding a prohibition on counting DCPP toward short-term RA compliance requirements, or for power content label purposes, the absence of such prohibitions is strong evidence that the Legislature intended it to be used for these purposes.

Indeed, although SB 846 does not explicitly address whether the RA benefits of DCPP should be allocated to the LSEs who are paying for extended operations, the statutory language indicates the plant will continue to contribute to RA requirements during extended operations. SB 846 added Section 25233.2(d) to the Public Resources Code, which provides:

> On or before July 1, 2023, and on July 1 of each year thereafter until 2031, the commission, in coordination with the Public Utilities

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[38] Cal. Pub. Util. Code § 712.8(q). State agencies also may not consider DCPP in achieving California's eligible renewable and zero-carbon resource goals in Public Utilities Code Section 454.53(a) after August 26, 2025. *See* Cal. Pub. Util. Code § 454.53(b)(5).

[39] *See* Cal. Pub. Util. Code §§ 454.52(f)(1)-(2)) ("(1) The commission shall not include the energy, capacity, or any attribute from Diablo Canyon Unit 1 beyond November 1, 2024, or Unit 2 beyond August 26, 2025, in the adopted integrated resource plan portfolios, resource stacks, or preferred system plans. (2) The commission shall disallow a load-serving entity from including in their adopted integrated resource plan any energy, capacity, or any attribute from the Diablo Canyon Unit 1 beyond November 1, 2024, or Unit 2 beyond August 26, 2025.").

> Commission and the Independent System Operator, shall publish on its internet website in a new report, or as part of another report, an assessment of the operation of the Diablo Canyon powerplant. The report shall include, but not be limited to, outage information, powerplant operational costs, average revenues from electricity sales, worker attrition, ***and the powerplant's contribution to resource adequacy requirements***.[40]

The fact that SB 846 requires the California Energy Commission (CEC), in coordination with the Commission and the California Independent System Operator (CAISO), to continue to report on DCPP's contribution to RA requirements through 2031 shows the Legislature expected DCPP to count toward RA requirements during the extended operations period.

In interpreting statutes, the California Supreme Court has held that "our fundamental task is to determine the Legislature's intent so as to effectuate the law's purpose."[41] "If the statutory language is unambiguous, then its plain meaning controls. If, however, the language supports more than one reasonable construction, then we may look to extrinsic aids, including the ostensible objects to be achieved and the legislative history."[42] As discussed above, SB 846 indicates DCPP will continue to count toward RA requirements during extended operations and provides the Commission with authority to allocate DCPP's benefits and attributes to LSEs.

However, even if SB 846 were considered to be ambiguous on these issues, the legislative history of the bill is clear that the Legislature intended to allow DCPP to count toward LSEs' RA compliance requirements during extended operations. The Senate Rules Committee, Office of Senate Floor Analyses report on SB 846 dated September 1, 2022, the same day that SB 846 was passed in the Senate and Assembly, states:

> This bill also excludes DCPP from any future resource planning, either by state agencies to meet our 100 percent clean energy goals or by individual LSEs, thereby forcing LSEs to procure enough resources to treat DCPP as if it did not exist. ***The exception to this DCPP exclusion***

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40 Emphasis added.

41 *People v. Cole*, 38 Cal. 4th 964, 974 (2006) (quoting *People v. Murphy*, 25 Cal. 4th 136, 142 (2001)).

42 *Id.* at 975 (citing *In re Young*, 32 Cal. 4th 900, 906 (2004)).

> ***is for RA procurement compliance, where DCPP is permitted to count toward LSE obligations as a ratepayer relief measure***.[43]

The same language is also included in a report dated August 28, 2022.[44] This statement makes it clear that the Legislature intended to treat RA compliance differently than future resource planning for new resources. Although DCPP cannot be considered in future resource planning during extended operations, the Legislature intended that DCPP could count toward LSEs' RA compliance requirements to provide ratepayer relief from the significant costs that DCPP's extended operations will impose on customers. The legislative history of an ambiguous statute is "dispositive only when that history is itself unambiguous."[45] Here, even if SB 846 were considered to be ambiguous, the legislative history of SB 846 is unambiguous that the Legislature intended to allow LSEs to count DCPP for RA compliance during extended operations.

PG&E and Women's Energy Matters (WEM) oppose allocation of DCPP's RA benefits to LSEs during extended operations, asserting that such an allocation of RA benefits would be contrary to the intent and language of SB 846.[46] PG&E claims that allocating DCPP's RA capacity "is not consistent with the legislative intent with extending Diablo Canyon's extended operations."[47] PG&E cites Public Utilities Code Section 712.8(q), providing that the purpose of extending DCPP operations is to protect the state against significant uncertainty in future demand, and to address the risk that currently ordered procurement will be insufficient or that there may be delays in bringing the ordered resources online.[48] PG&E also relies on Public

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[43] Senate Rules Committee, Office of Senate Floor Analyses, SB 846, September 1, 2022, at 11, at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB846# (emphasis added).

[44] *See* Senate Third Reading, SB 846, August 28, 2022, at 12, at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB846#.

[45] *Medical Bd. of California v. Superior Court*, 111 Cal. App. 4th 163, 179 (2003) (citing *J.A. Jones Construction Co. v. Superior Court*, 27 Cal. App. 4th 1568, 1578 (1994)). *See also Siskiyou County Farm Bureau v. Dept. of Fish & Wildlife*, 237 Cal. App. 4th 411, 439-440 (2015).

[46] *See* PG&E-02 at 5-1-5-3; WEM-01 at 2-6.

[47] PG&E-02 at 5-3.

[48] *See id.* at 5-1.

Resources Code Sections 25548(b) and (c) stating that the option of DCPP extended operations "may be necessary to improve statewide energy system reliability and to reduce the emissions of greenhouse gases while additional renewable energy and zero-carbon resources come online" and that "the state will continue to act with urgency to bring clean replacement energy online to support reliability and achieve California's landmark climate goals."[49] In addition, PG&E references Public Utilities Code Section 454.52(f)(2) requiring the Commission to "disallow a load-serving entity from including in their adopted integrated resource plan any energy, capacity, or any attribute from" DCPP after the current retirement dates.[50] Similarly, WEM argues that allocating the RA and GHG-free attributes of DCPP during extended operations "directly violate the clear language of SB846, which states that LSE's [sic] are ***not*** to include Diablo Canyon's energy, capacity or attributes in their integrated resource plans, resource stacks or preferred system plans during potential extended operations."[51]

PG&E and WEM are incorrect. None of these statutory provisions preclude the Commission from allocating the RA benefits of DCPP to all LSEs whose customers pay for extended operations. Nor do they prohibit LSEs from using the GHG-free attributes from DCPP on their power content labels during extended operations. As discussed above, the lack of a prohibition on allocating RA and the legislative history of SB 846 are clear that the Legislature intended that DCPP could count toward LSEs' RA compliance requirements during extended operations as a customer rate relief measure. Moreover, the same Public Utilities Code Section 712.8(q) cited by PG&E is explicit that the Commission has authority to allocate benefits or attributes from DCPP's extended operations, stating that "[t]o the extent the commission decides to allocate any benefits or attributes from extended operations of the Diablo Canyon powerplant…."

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[49] *See id.* at 5-1-5-2.
[50] *See id.* at 5-1.
[51] WEM-01 at 2 (emphasis in original).

Public Utilities Code Section 454.52(f)(1) and (2), referenced by PG&E and WEM, preclude the inclusion of DCPP's energy, capacity, and other attributes past the current retirement dates in adopted IRP portfolios, resource stacks, preferred system plans, and LSEs' adopted IRPs. However, short-term RA compliance and power content labeling are not part of the IRP process. There is no prohibition on using DCPP attributes during extended operations for RA compliance, power content label purposes, or to meet other electrical system requirements. The Legislature expressly excluded counting DCPP attributes in the IRP process during extended operations and could have easily done the same for RA compliance and power content labeling.

Furthermore, allocating the RA benefits of DCPP to LSEs whose customers pay for extended operations will not reduce the incentive for LSEs to procure new clean resources needed for reliability and GHG reduction or prevent California from acting with urgency to bring new clean resources online, as PG&E and WEM suggest.[52] As noted above, the Legislature did not see any conflict between allowing DCPP to be used for RA compliance and ensuring the state continues to develop new clean replacement resources. Additionally, LSEs are already required to procure an unprecedented amount of incremental clean resources to replace DCPP and meet system reliability and clean energy needs under existing IRP procurement orders.[53] Regardless of whether LSEs can use DCPP toward RA compliance, LSEs will be required to meet these procurement orders and will not reduce or slow down the pace of this procurement. And as required by statute, the Commission will also continue to assess whether additional capacity and/or energy is needed by the system through the IRP process, without considering the energy, capacity, or any attribute from DCPP during extended operations to ensure the state

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[52] *See* PG&E-02 at 5-1-5-2; WEM-01 at 2-6.

[53] *See* Decision (D.) 19-11-016; D.21-06-035; D.23-02-040. This includes 2,500 MW of zero-emitting capacity from generation resources, generation resources paired with storage, or demand response resources with specific characteristics to ensure that the capacity retiring at DCPP is replaced entirely with zero-emitting resources. *See* D.21-06-035 at Ordering Paragraph (OP) 6.

continues to procure clean energy sources.[54] Indeed, the very concern that PG&E and WEM raise is already addressed by this prohibition of considering DCPP in the IRP process.

Moreover, new capacity resources are not developed through the short-term RA market, which is where DCPP's attributes will be used.[55] New resources are developed through procurement authorizations in the IRP proceeding as described above. Accordingly, allocating the RA benefits of DCPP will not prevent or deter LSEs from engaging in incremental procurement of new clean resources.[56] Rather, it will minimize LSEs' short-term RA procurement costs and provide rate relief to customers as new resources are being developed and brought online and help address any delays in bringing new ordered resources online, which was the intent of SB 846.[57]

PG&E also expresses concern that reliance upon DCPP for RA compliance could reduce the pressure to retain existing resources needed for reliability.[58] However, the electric system is currently operating with DCPP counting toward RA compliance and there is no evidence that the existing resources needed for reliability will not be retained if DCPP continues to count for RA compliance during extended operations. In fact, the RA market has been tight in recent years with prices increasing significantly and some LSEs struggling to meet their RA requirements.[59] CalCCA discusses the constrained RA market, even with DCPP in operation, in its testimony.[60] PG&E also acknowledges that its concern that allocating DCPP's RA will not provide an incentive for retaining existing resources only holds true if there is a surplus of RA capacity available in the market, and that there is currently a tightening of the system RA market.[61]

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[54] *See* Cal. Pub. Util. Code §§ 454.52(f)(1)-(2).

[55] *See* CalCCA-01 at 14-15 (noting that PG&E's position "ignores the difference between the [IRP] process and the Commission's procurement focused decisions, which drive the construction of new resources, and RA compliance, which drives near-term LSE procurement to optimize the use of already-existing resources.").

[56] *See* SCE-01 at 7-8.

[57] *See* Cal. Pub. Util. Code § 712.8(q); Cal. Pub. Res. Code § 25548(b).

[58] *See* PG&E-02 at 5-2; PG&E-04-R at 2-25.

[59] *See* SCE-02 at 7.

[60] *See* CalCCA-01 at 7-13.

[61] *See* CalCCA-04 (responses to questions 4 and 7).

The Commission can also continue to conduct reliability analyses considering both the new and existing resources needed to support long-term reliability without considering the energy, capacity, or other attributes of DCPP during extended operations. If existing resources need to be retained, the Commission and the CAISO can consider what policies may be needed to retain such resources without ignoring the substantial RA benefits of DCPP to customers.

2. **The Commission Should Allocate DCPP's RA Benefits to Ensure Customers Receive the Value They Pay For and Minimize the Substantial Costs of Extended Operations**

The Commission has an obligation to ensure rates charged by public utilities are just and reasonable.[62] SCE does not yet have a complete forecast of all of the costs for DCPP's extended operations or the rates that will be charged to its customers. However, PG&E's testimony preliminarily forecasts costs of approximately $7.3 billion for DCPP for 2025 through 2030.[63] Given the substantial costs of extending the operations of DCPP that will be borne by all LSE customers, RA benefits should also be shared by all customers. It would be unfair and unreasonable not to provide customers with cost responsibility the RA benefits of DCPP's extended operations.

Additionally, allocating DCPP's RA benefits will help to offset the significant costs of extended operations. As the Legislature intended, allowing DCPP to count toward LSEs' RA compliance requirements will act as a "ratepayer relief measure."[64] Pursuant to the Commission's IRP decisions, LSEs are procuring an unparalleled amount of new clean resources to come online in the next few years. However, those resources will take time to develop and are

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[62] *See* Cal. Pub. Util. Code § 451.

[63] *See* PG&E-04-R at 1-14 (Table 1-4). DCPP Unit 1's current retirement date is November 2, 2024 and Unit 2's current retirement date is August 26, 2025; therefore, these costs do not match up precisely with the extended operations period.

[64] Senate Rules Committee, Office of Senate Floor Analyses, SB 846, September 1, 2022, at 11, at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB846#; Senate Third Reading, SB 846, August 28, 2022, at 12, at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB846#.

susceptible to delay, particularly given market challenges such as global supply chain constraints, war in the Ukraine, lithium-ion price volatility, increase in capital costs, and interconnection queue delays.[65] By allocating DCPP's RA benefits to the LSEs whose customers are paying for extended operations, those LSEs can reduce their costs for RA procurement (which have become significant in recent years) in the short-term as new resources continue to be developed, thus reducing costs for customers.[66] DCPP Units 1 and 2 currently each have an RA Net Qualifying Capacity (NQC) of 1,140 MW, for a total of 2,280 MW.[67] Using the 2023 Forecast Market Price Benchmark for system RA of $7.39 per kilowatt (kW)-month,[68] DCPP's RA value is approximately $202 million per year.[69]

Distributing RA benefits from DCPP also reduces the costs of procuring RA in general because it adds a material amount of supply to a market that has seen scarcity in recent years.[70] SCE agrees with CalCCA that "[i]gnoring DCPP in the RA market, especially when it is still operating and providing system capacity, will only exacerbate the market constraints and artificially increase rates."[71] Likewise, Cal Advocates accurately states that "[m]arket liquidity from allocating the system RA benefits of the potential Diablo Canyon extension could … bring meaningful system RA pricing relief for ratepayers."[72]

Allocating DCPP's RA benefits to help reduce costs to customers is consistent with the intent of SB 846, as well as California's and the Commission's affordability goals. The

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65 *See* SCE-01 at 9.
66 *See id.*
67 *See* 2023 NQC List for CPUC Compliance, August 9, 2023 Version, at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/resource-adequacy-homepage/resource-adequacy-compliance-materials/cpuc-final-net-qualifying-capacity-report-for-compliance-year-2023-9aug23.xlsx.
68 *See* Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up, September 30, 2022, at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/community-choice-aggregation-and-direct-access/calculation-of-the-market-price-benchmarks-20220930.pdf.
69 2,280,000 kW x $7.39/kW-month x 12 = $202,190,400.
70 *See* SCE-01 at 10.
71 CalCCA-01 at 7.
72 CalPA-01 at 4.

Legislature has stated that "all residents of the state should be able to afford essential electricity … supplies."[73] The Commission "shall ensure that the rates are sufficient to enable the electrical corporation or gas corporation to recover a just and reasonable amount of revenue from residential customers as a class, while observing the principle that electricity and gas services are necessities, for which a low affordable rate is desirable and while observing the principle that conservation is desirable in order to maintain an affordable bill."[74] The Commission's strategic directives include "promot[ing] policies and rules that provide customers access to and affordable essential services for energy, communications, water and transportation."[75] With the significant costs of DCPP's extended operations and other economic pressures already facing customers, the Commission should allocate DCPP's RA benefits to help keep the rate for DCPP extended operations as affordable as possible.

PG&E's testimony discusses the CAISO substitution obligations for RA capacity and argues that "an allocation of [DCPP] RA capacity is effectively a means of LSEs shifting the portfolio management burden on PG&E to purchase and retain RA capacity on their behalf given the tight RA market."[76] However, PG&E confirms that it already uses resources within its existing portfolio and/or purchases to meet its substitution capacity obligations for outages at DCPP, as well as for certain CAM-eligible resources in its portfolio.[77] Management of CAISO substitution obligations during DCPP's extended operations would not be new or unprecedented and SCE agrees that the costs of substitution capacity should be recoverable from customers paying for extended operations. Moreover, the fact that the RA market is "tight" is not a reason

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[73] Cal. Pub. Util. Code § 382(b).

[74] Cal. Pub. Util. Code § 739(d)(2).

[75] California Public Utilities Commission, Strategic Directives, Government Process Policies, and Commission-Staff Linkage Policies, February 27, 2020, Policy Number SD-04, at 7, at: https://www.cpuc.ca.gov/-/media/cpuc-website/transparency/commissioner-committees/finance-and-administration/2021/strategic-directives-and-governance-policies.pdf.

[76] PG&E-04-0R at 2-19-2-21, 2-25.

[77] *See* CalCCA-04 (responses to questions 11-14).

to forego counting DCPP at all during extended operations. That would further increase scarcity in the RA market, increasing prices and costs to customers.

The effective management of plant operations can reduce and restrict the need for substitution to a few months outside of the summer season, and the value of RA available for ensuring reliability during the summer months greatly outweighs any substitution costs incurred during non-summer months.[78] PG&E acknowledges that it schedules known and/or foreseeable outages at DCPP "during times that the electrical grid is less likely to be constrained in its ability to meet system reliability needs" and that "the long-range plan for DCPP's refueling outages has Spring (April/May) and Fall (October/November) timeframes."[79] As noted above, DCPP provides 2,280 MW of RA NQC worth over $200 million per year. In response to a CalCCA data request, PG&E estimated substitution costs between approximately $25.7 million and $35.6 million.[80] The RA benefits of DCPP significantly exceed those estimated costs.

Lastly, DCPP is a 24 by 7 resource that will be particularly helpful in meeting the energy sufficiency test in the new 24-hour slice RA framework.[81] Indeed, in addition to reducing costs for customers, allocating DCPP's RA benefits during extended operations also benefits the system by ensuring that DCPP will continue to contribute to meeting system RA requirements and be subject to the CAISO must-offer obligation.[82]

3. The Commission Should Use the Current CAM Approach for Allocating RA Benefits Among LSEs

During the extended operations period, SCE agrees with CalCCA and AReM/DACC[83] that the RA benefits of DCPP should be allocated to all LSEs whose customers pay for extended operations using the same approach currently used to allocate the RA benefits of CAM

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[78] *See* SCE-01 at 11.
[79] CalCCA-04 (response to question 9).
[80] *See id.* (response to question 15).
[81] *See* SCE-01 at 11.
[82] *See id.*
[83] *See* SCE-01 at 11-13; SCE-02 at 8-9; CalCCA-01 at 5-7; CalCCA-03 at 6; AReM-01 at 5-6.

resources.[84] DCPP does not count for local or flexible RA so the allocation would be limited to system RA benefits. Specifically, just as it does today, PG&E would continue to act as Scheduling Coordinator for DCPP and manage outages at the plant. PG&E would show DCPP on its RA compliance filings to count toward PG&E's system RA compliance requirements. For non-PG&E LSEs whose customers are paying for DCPP's extended operations, the Commission would provide the LSE a DCPP credit that would count toward their system RA compliance requirements. The Commission would also provide PG&E with a DCPP debit that is a negative value (meaning an addition to PG&E's system RA compliance requirements) equal to the amount of DCPP credits provided to other LSEs. The main difference between the current CAM process and the allocation of system RA benefits from DCPP would be that DCPP's system RA benefits would be allocated to all LSEs across the state whose customers pay for extended operations, not just LSEs in PG&E's service area.

For CAM resources, RA counting benefits are allocated to LSEs based on the LSE's share of 12-month coincident peak, adjusted on a monthly basis to facilitate load migration.[85] The same approach should be used for allocating DCPP's system RA benefits to LSEs whose customers pay for extended operations. Each LSE should receive a share of DCPP's system RA based on the LSE's share of 12-month coincident peak for the CAISO Control Area.

Using the CAM approach to allocate DCPP's RA benefits during extended operations is fair and can be accomplished using existing mechanisms that are already working in the current RA process. To the extent any changes are made to the process for allocating the RA benefits of CAM resources in the new 24-hour slice RA framework, similar changes could be made for allocating the RA benefits of DCPP.

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[84] *See* California Public Utilities Commission, 2023 Filing Guide for System, Local, and Flexible Resource Adequacy (RA) Compliance Filings, R.21-10-002, September 30, 2022, at 33-35, at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/resource-adequacy-homepage/resource-adequacy-compliance-materials/final-2023-ra-guide-clean-93022.pdf.

[85] *See* D.06-07-029 at 31.

Although the Commission is permitted to consider the higher costs to customers in PG&E's service area in allocating the benefits and attributes of DCPP's extended operations,[86] SCE recommends that the Commission allocate RA benefits to all LSEs whose customers pay for extended operations based solely on peak load share. Customers in PG&E's service area already receive other significant benefits for the additional costs they will pay for extended operations under SB 846. In particular, if the market revenues for extended operations exceed the costs and expenses, any available surplus revenues are credited solely to customers in PG&E's service area.[87] In other words, despite making significant payments toward the operation and maintenance of DCPP, under SB 846, non-PG&E service area customers have no chance of upside benefits from the CAISO market. Similarly, at the conclusion of extended operations, any funds remaining in the DCPP Extended Operations liquidated damages balancing account, which could total $300 million, shall be returned to customers in PG&E's service area.[88] Because customers in PG&E's service area have statutory advantages over other customers in receiving excess funds, the Commission should not treat LSEs and customers in PG&E's service area any differently with respect to RA allocation than other LSEs and customers who pay for extended operations. Moreover, allocating RA benefits based on peak load share is a simple approach that is already being implemented by Energy Division staff for CAM resources.

B. All LSEs Whose Customers Pay for Extended Operations Should Be Allocated GHG-Free Attributes From DCPP to Be Used for Power Content Label Purposes

SCE, CalCCA, and AReM-DACC all support the Commission authorizing voluntary allocations of DCPP's GHG-free attributes to LSEs for power content label purposes using similar approaches.[89] The Commission should adopt these recommendations and provide LSEs

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[86] *See* Cal. Pub. Util. Code § 712.8(q).
[87] *See* Cal. Pub. Util. Code § 712.8(h)(3).
[88] *See* Cal. Pub. Util. Code § 712.8(t).
[89] *See* SCE-01 at 15-17; SCE-02 at 9-11; CalCCA-01 at 17-19; CalCCA-03 at 12-15; AReM-01 at 7-8.

whose customers are paying for extended operations a voluntary allocation of GHG-free attributes from DCPP for use on their power content labels.

SCE proposes that all LSEs whose customers pay for DCPP's extended operations have the option (but not the requirement) to take their share of the GHG-free attributes generated by DCPP during extended operations.[90] Each LSE's share of the GHG-free attributes should be based on its share of retail sales for the prior year and PG&E's reporting on DCPP's generation for the prior year.[91] For the same reasons discussed in Section VI.A.3 with respect to RA benefits, the Commission should use the same methodology for allocating GHG-free attributes to LSEs in PG&E's service area and other LSEs whose customers pay for extended operations. For the IOUs, their share would be based on bundled retail sales as all LSEs would receive their own share, rather than having the IOU allocate to LSEs in their service area.

SCE suggests that the Commission provide each LSE with its allocation to ensure consistency.[92] The Commission could require additional reporting from PG&E and other LSEs as needed and work with the CEC based on existing reporting. Each LSE should receive their share of GHG-free attributes sufficiently in advance of the CEC's reporting deadlines for power content label submissions, which are currently due on June 1.

WEM opposes any allocation of GHG-free attributes, claiming that such an allocation violates SB 846 and that the CEC's power content label regulation does not allow unbundled renewable energy credits (RECs) to count toward the GHG intensity of an LSE's electricity supply.[93] WEM is wrong.

As addressed in Section VI.A.1, the Legislature recognized that DCPP's extended operations would provide benefits to customers and gave the Commission authority to allocate such benefits or attributes.[94] Although the GHG-free attributes of DCPP cannot be considered

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[90] *See* SCE-01 at 16.
[91] *See id.*
[92] *See id.*
[93] *See* WEM-01 at 2-5.
[94] *See* Cal. Pub. Res. Code § 25548(d); Cal. Pub. Util. Code § 712.8(q).

during extended operations in future resource planning such as the IRP process or to count toward the state's zero-carbon resource goals,[95] SB 846 permits such attributes to be used in LSEs' power content labeling. Public Utilities Code Section 454.52(g) states that "[f]or a thermal powerplant that uses nuclear fission technology not constructed in the twenty-first century, all resource attributes shall be retired on January 1, 2031, and shall be reported as a separate, line item resource for purposes of complying with Section 398.4." Section 398.4 is a part of the code sections on power content labeling, stating, among other things, that "[e]very retail supplier that makes an offering to sell electricity that is consumed in California shall disclose its electricity sources and the associated greenhouse gases emissions intensity for the previous calendar year."[96] As such, SB 846 is clear that DCPP can be reported in power content labeling through the extended operations period, and that it should be reported as a separate, line item resource to comply with Section 398.4.

Moreover, LSEs will not be using unbundled RECs to count on their power content labels. RECs are not created by DCPP. Instead, LSEs will receive a voluntary allocation of the GHG-free energy from DCPP. The Commission has already approved a very similar process for voluntary allocations of GHG-free energy to LSEs in PG&E's and SCE's service areas whose customers pay Power Charge Indifference Adjustment departing load charges in Resolutions E-5046 and E-5095 and D.23-06-006.[97]

PG&E argues that it has "significant concerns that allocating GHG-free energy from DCPP's extended operations would effectively frustrate LSEs' ability in making progress towards the state's goals," including the state's Renewables Portfolio Standard (RPS) and zero-carbon resource goals.[98] However, DCPP does not count toward LSEs' RPS goals and also does not count toward the state's zero-carbon resource goals after August 26, 2025.[99] As explained

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[95] *See* Cal. Pub. Util. Code §§ 454.52(f)(1)-(2), 454.53(b)(5), and 712.8(q).
[96] Cal. Pub. Util. Code § 398.4(a).
[97] *See* D.23-06-006 at 12-34.
[98] PG&E-04-R at 2-23.
[99] *See* Cal. Pub. Util. Code § 454.53(b)(5).

above, Public Utilities Code Section 454.52(g) provides that DCPP can be reported on power content labels as a separate line item through extended operations. Therefore, there will not be any "inflation" of LSEs' GHG-free energy amounts that could discourage LSEs from bringing clean energy resources online as suggested by PG&E.[100] DCPP will not contribute to RPS and zero-carbon resource goals during extended operations and DCPP will be listed separately on LSEs' power content labeling.

The current regulations governing the power content label require that LSEs have an executed purchase agreement prior to generation of the procured electricity in order for specified electricity to be assigned the GHG emissions intensity of the associated generator; otherwise, it will be assigned the GHG intensity of unspecified power.[101] Accordingly, unless there is change to the regulations to address DCPP's extended operations, LSEs would need a purchase agreement with PG&E to use the GHG-free attributes from DCPP as a specified resource on their power content labels. SCE proposes that PG&E execute a purchase agreement with each LSE that wants an allocation of GHG-free attributes from DCPP prior to the beginning of any extended operations period.[102]

Cal Advocates suggests that the Commission should defer to the CEC to address any confirming charges to implement SB 846, and particularly Public Utilities Code Section 454.52(g), in the Power Source Disclosure Program.[103] While SCE agrees that any regulatory changes to the Power Source Disclosure Program should be left to the CEC, the CEC would not be responsible for determining the allocation of DCPP's GHG-free attributes to LSEs whose customers are paying for extended operations. That is the role of the Commission. Therefore, the Commission should find that LSEs are entitled to a voluntary allocation of DCPP's GHG-

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[100] *See* PG&E-04-R at 2-23-2-24.
[101] *See* Cal. Code Regs. Tit. 20, §§ 1391 (definition of "Specified purchase") and 1393(c)(1)(A).
[102] *See* SCE-01 at 16-17.
[103] *See* CalPA-01 at 8-9.

free attributes for power content label purposes, and the CEC can determine what, if any, regulatory changes are needed to implement SB 846 in the Power Source Disclosure Program.

Finally, PG&E "does not believe that any marketing or Power Content Label value of allocating DCPP's GHG-free energy to Commission-jurisdictional LSEs would outweigh the potential costs to administer an allocation framework, corresponding agreements, and reporting requirements."[104] But all LSE customers will pay substantial costs for DCPP's extended operations and should receive all benefits and attributes generated by DCPP that are permitted by statute. The potential administrative burden to implement any allocation framework should not outweigh the fundamental fairness of reimbursing LSEs and their customers for part of the substantial costs of extended operations.

Further, any administrative burden could be minimized by using a similar approach to the one already used for voluntary allocations of GHG-free energy by PG&E. While contracts with LSEs who elect a voluntary allocation would be needed, the same contract could be used for each year's allocation with updates to reflect that year's allocation of GHG-free attributes. CalCCA states that PG&E's "confirmation agreement is a standard form that does not substantively change year to year," and that "expanding PG&E's existing interim allocation process to all Commission-jurisdictional LSEs may simply require PG&E to enter into additional standard form agreements with LSEs outside of its service territory."[105] Moreover, PG&E is not tracking the costs of its current interim GHG-free energy allocation framework and could not quantify the costs of expanding the program for all Commission-jurisdictional LSEs.[106]

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[104] PG&E-04-R at 2-23.
[105] CalCCA-03 at 13.
[106] *See id.* (citing PG&E's responses to CalCCA data requests 2.18 and 2.19).

C. <u>DCPP Should Continue to Count for All Purposes During Extended Operations Except for Future Resource Planning</u>

In addition to allocating RA benefits (as discussed in Section VI.A above) and GHG-free attributes for power content label purposes (as discussed in Section VI.B above), the Commission should recognize that the energy, capacity, and other attributes of DCPP are only precluded from counting during extended operations in future resource planning to identify the new resources needed to ensure reliability and meet the state's GHG reduction and zero-carbon resource goals. As long as it is operating, DCPP should continue to be considered in meeting other electrical system operational requirements and needs.[107] For example, as baseload generation, DCPP not only produces power during system peak hours, but it also provides firm energy to charge batteries and further enhance system reliability.[108] DCPP should therefore be considered in reliability studies supporting annual summer readiness activities. Doing so will help minimize customer costs by reducing or avoiding the need for LSEs and the state to take additional extraordinary and often high cost measures to support reliability.[109]

VII.

WHETHER ADDITIONAL GUIDANCE SHOULD BE PROVIDED ON THE USE OF ANY SURPLUS RATEPAYER FUNDS PG&E RECEIVES FOR DIABLO CANYON

The Commission asked: "Should additional guidance be provided on the use of any surplus ratepayer funds PG&E receives for Diablo Canyon in 2024, beyond what is provided in Cal. Pub. Util. Code § 712.8(t)(1)? Why or why not?"[110] SCE recommends that any surplus ratepayer funds be used to reduce the costs of extended operations and minimize rate impacts on

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[107] *See* SCE-01 at 13-14.
[108] *See id.*
[109] *See id.* at 14.
[110] Administrative Law Judge's Ruling Requesting Comments Served as Testimony on Statutory Interpretation and Issues of Policy, and Incorporating Certain Reports into the Record of This Proceeding, R.23-01-007, April 20, 2023, at 8. The former Public Utilities Code Section 712.8(t) is now Section 712.8(s).

all customers.[111] This is consistent with Public Utilities Code Section 712.8(s)(1),[112] which provides guidance for PG&E's use of the volumetric management fee authorized in Section 712.8(f)(5). Section 712.8(s)(1) states:

> The operator shall submit to the commission for its review, on an annual basis the amount of compensation earned under paragraph (5) of subdivision (f), how it was spent, and a plan for prioritizing the uses of such compensation the next year. Such compensation shall not be paid out to shareholders. Such compensation, ***to the extent it is not needed for Diablo Canyon***, shall be spent to accelerate, or increase spending on, the following critical public purpose priorities:
>
> (A) Accelerating customer and generator interconnections.
>
> (B) Accelerating actions needed to bring renewable and zero-carbon energy online and modernize the electrical grid.
>
> (C) Accelerating building decarbonization.
>
> (D) Workforce and customer safety.
>
> (E) Communications and education.
>
> (F) Increasing resiliency and reducing operational and system risk.[113]

Thus, the compensation is to be used for other critical public purposes only "to the extent it is not needed for Diablo Canyon."

Cal Advocates and San Diego Gas & Electric Company (SDG&E) agree that surplus funds from the volumetric management fee should be used first to pay for DCPP extended operations costs.[114] PG&E disagrees, arguing that "PG&E views this proposed utilization of volumetric performance funds earned under Section 712.8(f)(5), as inconsistent with statutory intent, ineffective, and inefficient."[115] PG&E "does not agree that this section envisions using

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[111] *See* SCE-01 at 18.
[112] Cal. Pub. Util. Code § 712.8(s) was formerly § 712.8(t).
[113] Emphasis added.
[114] *See* CalPA-01 at 9-10; CalPA-03 at 1-7; SDG&E-01 at GM-5. The Utility Reform Network (TURN) also agrees with respect to funds collected from customers outside of PG&E's service territory. *See* TURN-02 at 11.
[115] PG&E-04-R at 2-27.

these funds to first offset operational costs as a matter of standard, annual practice" and argues that using the funds for the public purpose priorities in SB 846 is a "more straightforward and efficacious use of volumetric performance funds."[116] PG&E asks for the discretion to determine the most effective use of the funds.[117]

However, PG&E's proposal ignores the plain language of Public Utilities Code Section 712.8(s)(1), which clearly states that the compensation is to be spent on critical public purpose priorities, "to the extent it is not needed for Diablo Canyon." "If the statutory language is unambiguous, then its plain meaning controls. If, however, the language supports more than one reasonable construction, then we may look to extrinsic aids, including the ostensible objects to be achieved and the legislative history."[118] Here, the statutory language is unambiguous that the compensation is only to be spent on critical purpose priorities to the extent not needed for DCPP. Even if the statutory language was considered ambiguous, Cal Advocates explains that the legislative history of SB 846 also states that "the compensation from this volumetric charge cannot be paid to shareholders, but rather ***must be used to first meet needs at DCPP*** and then to accelerate, or increase spending on, critical priorities…."[119] The California Supreme Court has stated "we strive to give effect to all the words in a statute, avoiding surplusage whenever possible."[120] PG&E's interpretation of Section 712.8(s)(1) violates this principle of statutory construction by reading "to the extent it is not needed for Diablo Canyon" out of the statute, and should therefore be rejected.

If PG&E is given discretion to use the compensation from the volumetric management fee to first meet public purpose priorities, that should be limited to the fees received from customers in PG&E's service area. The Commission should adopt TURN's recommendation

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[116] *Id.* at 2-28.
[117] *See id.* at 2-29.
[118] *People v. Cole*, 38 Cal. 4th 964, 975 (2006) (citing *In re Young*, 32 Cal. 4th 900, 906 (2004)).
[119] *See* CalPA-03, Attachment 2 at 4 (emphasis added).
[120] *People v. Valencia*, 3 Cal. 5th 347, 410 (2017) (citing *City and County of San Francisco v. Farrell*, 32 Cal. 3d 47, 54 (1982)).

that "[i]n the interest of advancing affordability, the Commission policy should adopt as a default practice that all Surplus Funds collected from ratepayers located outside PG&E's service territory (and any funds collected from ratepayers located in PG&E's service territory that are not spent on critical public purpose priorities) should be applied as a credit to reduce the costs of extended operations at Diablo Canyon."[121] Otherwise, it is not clear that PG&E's spending on the public purpose priorities would benefit customers outside of its service area. For example, PG&E's spending on accelerating customer and generator interconnections may not benefit customers outside of its service area.

VIII.

CONCLUSION

For all the foregoing reasons, the Commission should adopt SCE's recommendations set forth in its testimony and herein.

Respectfully submitted,

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[121] TURN-02 at 12.