BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

FILED
09/29/23
03:23 PM
R2301007

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

REPLY BRIEF OF THE ALLIANCE FOR RETAIL ENERGY MARKETS AND THE DIRECT ACCESS CUSTOMER COALITION

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September 29, 2023

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SUMMARY OF RECOMMENDATIONS

In its opening and rebuttal testimony and opening brief filed in this proceeding, the Alliance for Retail Energy Markets ("AReM") and the Direct Access Customer Coalition ("DACC") (collectively, "AReM/DACC") has made the following four recommendations:

First, that the Commission should allocate the resource adequacy ("RA") benefits associated with Diablo Canyon Power Plant's ("DCPP") extension in the same way that the current cost allocation mechanism ("CAM") capacity is allocated, as explained below.

Second, that the greenhouse gas free ("GHG-free") attributes associated with the extended operation of DCPP should be offered to all load-serving entities ("LSEs") proportional to the revenues generated by the LSE's customers through the statewide non-bypassable charge ("NBC").

Third, the allocated RA and GHG attributes must be fungible so that those LSEs who need the attributes may purchase them from those who do not.

Fourth, because the extension of DCPP is fundamentally to address reliability, the nonbypassable charges must be allocated and charged in a manner consistent with capacity. AReM/DACC and others have put forth a capacity-based allocation and rate structure for the NBCs, which should be adopted.

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AReM/DACC hereby submit this reply brief in accordance with the schedule provided in the April 6, 2023, Assigned Commissioner's Scoping Memo and Ruling, as extended in the ruling of Administrative Law Judge Seybert on September 13.

I. INTRODUCTION

The April 6, 2023, *Assigned Commissioner's Scoping Memo and Ruling* ("Scoping Memo") identifies as Issue 5 the following:

> *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.*[1]

This AReM/DACC reply brief addresses solely that issue.

The opening briefs of three parties, Pacific Gas and Electric ("PG&E"), Women's Energy Matters ("WEM") and the Alliance for Nuclear Responsibility ("A4NR") continue to contend inaccurately that the language of Senate Bill 846 ("SB 846") prevents the allocation of both RA benefits and GHG-Free attributes associated with the DCPP extension.

[1] Scoping Memo, at p. 6.

Conversely, Southern California Edison ("SCE"), San Diego Gas & Electric ("SDG&E"), the Public Advocates Office, the California Community Choice Association ("CalCCA"), the Green Power Institute ("GPI"), Small Business Utility Advocates ("SBUA"), and AReM/DACC have demonstrated that SB 846 allows for the allocation of RA and GHG-Free attributes to LSEs based on what they (and thereby their customers) pay for DCPP power. This is clear for two primary reasons.

First, as noted in AReM/DACC's opening brief, SB 846 prevents DCPP extension period attributes from being used in *only* three specific circumstances: (1) integrated resource plans, (2) preferred system plans, and (3) resource stacks.[2] However, these topics deal explicitly with integrated resource planning, not RA. Instead, RA is covered under P.U. Code Section 380 which provides, in part, "The commission, in consultation with the Independent System Operator, shall establish resource adequacy requirements for all load-serving entities."

Second, several parties have demonstrated that the Legislature intended for such allocations. The Senate Rules Committee analysis report on SB 846 states that RA can be counted as a ratepayer relief measure and express language in SB 846 shows that the Legislature expected the Commission to allocate RA benefits from DCPP.

Each of these circumstances are discussed in more detail below, as is a response to the PG&E recommendations in the event the Commission should order the allocation of RA and GHG-Free resources.

[2] *See*, P.U. Code Sections 454.52(f)(1) and (2).

II. THE OPPONENTS TO ALLOCATIONS MISINTERPRET SB 846.

Both WEM[3] and A4NR[4] allege that P.U. Code Sections 454.52(f)(1) and (2) preclude the allocation of RA benefits or GHG-Free attributes. They are incorrect. These sections of the P.U. Code provide in their entirety as follows:

> (f)(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.

The numerous parties advocating for the allocation of RA are not seeking to have these attributes included into integrated resource plans, nor into resource stacks nor into preferred system plans. Rather, these parties have advocated for the ability of LSEs to use such benefits to meet their RA obligations – which are entirely different from the proscribed resource planning tools cited in P.U. Code Sections 454.52(f)(1) and (2).

In this situation, as noted by CalCCA in its opening brief, the legal principle of *expressio unius est exclusio alterius* is applicable. As explained by the California Court of Appeal, "Under the principle *unius est exclusio alterius*, the enumeration of things to which a statute applies is presumed to exclude things not mentioned."[5] In this case SB 846 explicitly named only three items for which the energy or capacity from DCPP was to be excluded: *integrated resource plan portfolios, resource stacks, or preferred system plans*. There is no mention of resource adequacy,

[3] WEM states at p. 14 that it "stands by its testimony submitted June 9, 2023, regarding the allocation of benefits issues" and does not discuss the issue further.
[4] Exhibit A4NR-03 at 2-3.
[5] *People v. Salas*, 20179 Cal. App. 5th 736 (2017). *See, also*: *Moore v. Superior Court*, 58 Cal. App. 5th 561 (2020) and *Grassi v. Superior Court*, 73 Cal. App. 5th 283 (2021).

which is why the WEM and A4NR arguments to the contrary are incorrect and should be disregarded.

As for PG&E, it is notable that, unlike WEM and A4NR, it concedes that SB 846 *does not* explicitly prohibit the allocation of DCPP benefits. It has in fact stated that "PG&E acknowledges that there is no explicit prohibition of allocating DCPP's capacity for RA purposes[.]"[6] Further, it has said that "the Commission has the discretion to consider an allocation of RA capacity as part of this proceeding."[7] Instead, PG&E argues in its opening brief that "allocations are inconsistent with the Legislature's intent in SB 846"[8] without explaining further where such inconsistency lies or on what basis they have inferred this specific "intent."

If in fact the Legislature did not intend for the Commission to allow for the RA from DCPP to be allocated, then P.U. Code Section 25233.2(d), which was added by SB 846, would be unnecessary. It states:

> On or before July 1, 2023, and on July 1 of each year thereafter until 2031, the commission, in coordination with the Public Utilities 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***. (Emphasis added)

Clearly, if DCPP was to be disregarded for RA purposes, as is asserted by PG&E, WEM and A4NR, an express direction to the Commission to report on how DCPP contributes to meeting RA requirements would not have been included in the statute.

It is likely that the real source for PG&E's opposition to allocations is contained in the excerpt from its opening brief where it complains that "under the current RA compliance paradigm,

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[6] *See*, Ex. PG&E-4 at 2-15, lines 24-26; 2-24, lines 31-33.
[7] *See,* PG&E-04R at 2-24, line 35 to 2-25, line 2.
[8] PG&E at p. 41.

allocation of DCPP's RA attributes can impose significant portfolio management requirements on PG&E that go beyond the scope of those activities contemplated by the Legislature in enacting SB 846, resulting in costs and risks."[9] While it may be understandable that PG&E does not want to undertake this task, that does not mean that allocations should be rejected and that the LSEs who are required by statute to pay for their share of DCPP costs should be denied the commensurate benefits.

III. RESPONSE TO PG&E RECOMMENDATIONS SHOULD THE COMMISSION ORDER ALLOCATIONS

A. RA Allocation

PG&E makes the following recommendations[10] in the event that the Commission orders RA allocation:

- First, as part of any such allocation order, the Commission should clarify that Diablo Canyon's RA capacity should not be allocated to customers during months when there is a known and/or foreseeable maintenance outage.
- Second, the utility and Energy Division staff closely coordinate on Diablo Canyon's outage schedule, including any changes to Diablo Canyon's outage schedule, so that timely adjustments to allocated amounts to LSEs can occur.
- Third, in situations of unplanned or extended outage, where PG&E is obligated to procure substitution capacity for DCPP, PG&E should be authorized to fully recover any administrative and RA and/or energy procurement costs associated with meeting such substitution capacity obligation, with such costs to be equitably allocated among all LSEs bearing cost responsibility for extended operations.

[9] *Id.* at p. 41.
[10] PG&E, at p. 45.

- Finally, PG&E recommends that any allocation to Commission jurisdictional LSEs should be based on load share, and not the complex twelve coincident peak ("12 CP") mechanism discussed above, so that allocation is transparent, administratively efficient, and in line with cost-causation principles.

AReM/DACC support the first three recommendations as they will make for a fairer allocation process. That is, PG&E need not provide replacement capacity for known DCPP outages. However, AReM/DACC continues to support the capacity-based 12 CP method for RA allocation. While more complex than the simplistic load share allocation proposed by PG&E, it better reflects DCPP's provision of capacity and as such better aligns with cost causation principles.

B. GHG-Free Allocation

PG&E makes the following recommendations[11] in the event that the Commission orders GHG-Free allocation:

- PG&E should be authorized to recover the incremental costs of implementing GHG-free allocations though the statewide DCPP NBC.
- Cost recovery amongst Commission-jurisdictional customers should not be adjusted based on whether or not an LSE accepts or rejects an allocation of nuclear-based GHG-free attributes.

AReM/DACC would support these recommendations so that the utility can be fairly reimbursed for its incremental costs of implementing GHG-Free allocations.

[11] *Id.*, at pp. 46-47.

IV. THE OPPONENTS TO ALLOCATIONS IGNORE LEGISLATIVE HISTORY THAT SUPPORTS THE CASE FOR RESOURCE ADEQUACY ALLOCATION

The opposition by PG&E, WEM and A4NR to RA allocation is inconsistent with the actual legislative history of SB 846. 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 is for RA procurement compliance, where DCPP is permitted to count toward LSE obligations* as a ratepayer relief measure.[12]

The same language is also included in a report dated August 28, 2022.[13] The legislative record therefore makes it explicitly clear that DCPP "is permitted to count toward LSE" RA obligations. Arguments to the contrary ignore the legislative record and thus should be disregarded.

Finally, P.U. Code Section 25233.2(d), added by SB 846, states:

> On or before July 1, 2023, and on July 1 of each year thereafter until 2031, the commission, in coordination with the Public Utilities 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***. (Emphasis added, per SCE)

If DCPP was to be disregarded for RA purposes, asking the Commission to report on how it is contributing to meeting RA requirements would be unneeded. PG&E, WEM and A4NR ignore

[12] 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).

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

both this legislative history and this statutory directive to the Commission, both of which refutes their opposition to the allocation of RA.

V. CONCLUSION

AReM/DACC urge the Commission to order PG&E to allocate the RA and GHG attributes, allow those allocations to be fungible, and implement the NBCs using generation allocators.

Respectfully submitted,

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