

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



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Application of Pacific Gas and Electric Company to Recover in Customer Rates the Costs to Support Extended Operation of Diablo Canyon Power Plant from January 1 through December 31, 2027, and for Approval of Planned Expenditure of 2027 Volumetric Performance Fees (U39E).

Application 26-03-031

**RESPONSE OF THE COALITION OF CALIFORNIA UTILITY  
EMPLOYEES TO APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY**

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**RESPONSE OF THE COALITION OF CALIFORNIA UTILITY  
EMPLOYEES TO APPLICATION OF PACIFIC GAS AND ELECTRIC  
COMPANY**

Pursuant to Rule 2.6 of the Commission’s Rules of Practice and Procedure, the Coalition of California Utility Employees (CUE) files this response to the Application of Pacific Gas and Electric Company to Recover in Customer Rates the Costs to Support Extended Operation of Diablo Canyon Power Plant from January 1 through December 31, 2027, and for Approval of Planned Expenditure of 2027 Volumetric Performance Fees (VPF).

**I. INTRODUCTION**

CUE is a coalition of labor unions whose more than 43,000 members work at most of the electric utilities and combined electric and gas utilities in California. The International Brotherhood of Electrical Workers Local Union 1245 (IBEW 1245) is a member of CUE and represents approximately 20,000 PG&E employees and employees of contractors performing work for PG&E. Approximately 450 of these employees work at the Diablo Canyon Power Plant.

CUE has actively participated in related proceedings, including PG&E’s Application for Extended Operations of the Diablo Canyon Power Plant and Approval of Planned Expenditure of 2026 Volumetric Performance Fees (A.25-03-015), PG&E’s Application for Extended Operations of the Diablo Canyon Power Plant and Approval of Planned Expenditure of 2025 Volumetric Performance Fees (A.24-03-018), the Rulemaking Implementing Senate Bill 846 Concerning Potential Extension of Diablo Canyon Power Plant Operations (R.23-01-007), and the Application of Pacific Gas and Electric Company for Approval of Modifications to the Diablo Canyon Power Plant Employee Retention Program (A.23-10-009).

## **II. VPF SPENDING PLAN: PRELIMINARY COMMENTS ON LEGAL AND FACTUAL ISSUES**

Pursuant to SB 846, PG&E will continue operating the Diablo Canyon Power Plant (DCPP) and, in exchange, receive volumetric performance fee (VPF) compensation instead of a rate-based return.<sup>1</sup> PG&E cannot pay VPFs out to shareholders or earn a rate of return on VPF spending.<sup>2</sup> However, SB 846 gives PG&E wide latitude to spend VPFs on “critical public purpose priorities,” defined broadly to encompass any unfunded safety, reliability, energization, decarbonization and grid modernization work or unfunded customer service and worker safety programs.<sup>3</sup>

Consistent with the language of SB 846 and guidance in Decision 23-12-036, the Commission’s role in this preliminary “review” is to verify that PG&E’s

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<sup>1</sup> Pub. Util. Code §§ 712.8(f)(5), (s)(1).

<sup>2</sup> *Id.* § 712.8(s)(1).

<sup>3</sup> *See id.*; A.24-03-018, CUE Opening Comments on PD, p. 8.

proposed VPF spending plan will “accelerate” or “increase spending on” one or more of the “critical public purpose priorities” without earning shareholders a profit.<sup>4</sup> Next year, the Commission will review in detail how VPF compensation “was spent” to confirm that PG&E did not misappropriate the funds.<sup>5</sup> PG&E’s Chief Financial Officer must declare under penalty of perjury that the company did not spend VPFs to enrich shareholders.<sup>6</sup> Further, the Commission can sanction PG&E if it finds that the utility misappropriated VPF compensation to ineligible projects or shareholder profit.<sup>7</sup>

PG&E’s proposed 2027 VPF spending plan is consistent with Decision 25-06-002, which directed PG&E to consider affordability as a guiding principle in its VPF plan. \$205 million in annual expenses will be funded by VPF revenues rather than through PG&E’s general rate case. PG&E’s application also includes additional quantitative analyses on net benefits to ratepayers pursuant to Decision 25-12-007. PG&E’s proposal appears to be consistent with its 2026 VPF spending plan which the Commission found appropriate to conditionally approve in D.25-12-007.<sup>8</sup> Therefore, the Commission should be able to determine relatively quickly that these programs will accelerate or increase spending on SB 846 public purpose priorities consistent with section 712.8(s)(1).

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<sup>4</sup> Pub. Util. Code § 712.8(s)(1); D.23-12-036, p. 114. (Phase I decision in R.23-01-007).

<sup>5</sup> *Id.* § 712.8(s)(1); D.23-12-036, p. 113.

<sup>6</sup> D.23-12-036, p. 113.

<sup>7</sup> *Id.*

<sup>8</sup> D.25-12-007, p. 84, OP 3.

While it seems likely that PG&E's 2027 VPF spending plan complies with section 712.8(s)(1), CUE anticipates challenges to the plan by parties who, in litigating A.25-03-015, A.24-03-018 and R.23-01-007, sought to restrict PG&E's VPF spending authority in a manner inconsistent with the broad spending authority provided in SB 846. The Commission rejected these proposals in D.24-12-033, reinforcing its statutory interpretation of SB 846 that the Commission's role in reviewing PG&E's spending plan is to ensure compliance with the law, not to exert control over the spending.<sup>9</sup> PG&E's spending authority and the Commission's oversight authority as articulated in SB 846 has been litigated at length. CUE strongly urges the Commission to limit opportunities for parties to re-litigate these settled legal questions, as it is unnecessary and inefficient.

Further, CUE expects parties to litigate whether PG&E's proposed 2027 VPF spending is truly incremental to prior-approved work such that it accelerates or increases investment in SB 846 priorities, avoids double-recovery, and does not improperly benefit shareholders.<sup>10</sup> However, CUE reminds the Commission that SB 846 expressly requires after-the-fact review of PG&E's spending to determine compliance with these conditions.<sup>11</sup> It is therefore premature for the Commission, at the application phase, to make final determinations. Nevertheless, CUE anticipates

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<sup>9</sup> D.24-12-033, p. 64 (“[W]hile the Surplus Performance-Based Fees Application shall detail PG&E's spending proposals, PG&E is not required to justify how it intends to allocate surplus funds among the listed categories.”).

<sup>10</sup> Pub. Util. Code § 712.8(s).

<sup>11</sup> *Id.* (“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) [and] **how it was spent.**”)(emphasis added).

that some parties will continue to raise speculative claims that PG&E will misuse funds. To that end, CUE urges the Commission to keep the litigation focused on making prospective findings of fact that PG&E's spending plan, if implemented as proposed, would comply with SB 846 spending restrictions based on a preponderance of the evidence in the record.

### **III. SCHEDULE, SCOPE, NEED FOR HEARINGS AND CATEGORIZATION**

CUE agrees with PG&E's proposed issues to be considered in this proceeding and supports PG&E's proposed schedule. CUE urges the Commission to work efficiently to review and approve PG&E's application, including its 2027 VPF spending plan. Delays in approving PG&E's VPF spending plan ultimately hurt ratepayers by delaying deployment of funds that support projects and programs, which (1) make the grid more resilient, (2) facilitate integration of zero-carbon and renewable generation resources, (3) improve the safety and reliability of the grid and promote grid modernization, (4) facilitate building decarbonization and transportation electrification consistent with state directives, and (5) improve customer and workforce safety, among other benefits.

It is unclear at this time whether hearings will be necessary. CUE encourages the Commission and parties to resolve as many factual issues as possible through discovery, development of a paper record, and judicial notice. If hearings are required, they should be focused and efficient to avoid delay.

CUE agrees with PG&E that the appropriate categorization of this proceeding is ratesetting.

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Respectfully submitted,

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