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

Application of Pacific Gas and Electric Company (U 39 M), San Diego Gas & Electric Company (U 902 E), and Southern California Edison Company (U 338 E) for Authority to Increase Electric Rates and Charges to Recover Costs of Research and Development Agreement with Lawrence Livermore National Laboratory for 21st Century Energy Systems

Application 11-07-008
(Filed July 18, 2011)

REPLY BRIEF OF THE UTILITY REFORM NETWORK

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REPLY BRIEF OF THE UTILITY REFORM NETWORK

The Utility Reform Network (TURN) submits this reply brief addressing the request of the “Joint Utilities” (Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E)) for rate recovery of up to \$150 million to fund the 21st Century Project (CES-21 Project). This project would have the Joint Utilities enter into a five-year “cooperative research and development agreement” or CRADA with Lawrence Livermore National Laboratory (LLNL).

I. Introduction

The Joint Utilities’ opening brief begins with a truly remarkable claim:

CES-21 is one of the most extraordinary, innovative and positive collaborations on energy and environmental research, development and demonstration (RD&D) in the history of California.¹

TURN typically avoids hyperbole in our pleadings in Commission proceedings. But the utilities’ claim warrants a response.

This application is among the most poorly-conceived and inadequately-supported proposals that TURN’s representatives have seen in over two decades of experience before the Commission.

The difference between TURN’s claim and the utility’s is that TURN’s finds support in the actual evidentiary record. For example, consider the following undisputed facts:

The utilities seek permission to spend up to \$150 million over a five year period, but failed to present even a single specific example of a project that would be funded.

The utilities would appoint three of five voting members to the CES-21 board, then have all of the key project funding

¹ Joint Utilities Opening Brief, p. 1.

decisions made by that board, rather than by the Commission.

The proposed partnership was conceived and pitched by LLNL; the utilities accepted LLNL's claims of "uniqueness" without performing any amount of due diligence such as contacting or considering any of the number of other California facilities offering high performance computing resources.

The Joint Utilities faced a problem with the bombastic opening of their brief – they knew the record evidence would not support such claims. But rather than rein in the claims to match the record as it existed, the Joint Utilities set about revising the record in an attempt to create the appearance of support for their request. And so in numerous instances the Joint Utilities' opening brief makes critical and material changes to assertions that are otherwise lifted word-for-word from their own prepared testimony, cites their prepared testimony as support for assertions that the testimony makes either not at all or obliquely at best, and otherwise reflects a troubling pattern of disregard for the evidentiary record created in this proceeding.

The Commission needs to keep in mind that approval of the CES-21 Project is not required to enable the Joint Utilities to work with LLNL on an ongoing basis. There is nothing presently stopping any of the utilities (acting individually or together) from seeking LLNL's assistance should they identify a specific challenge that would benefit from such assistance.² Therefore denial of this application does NOT eliminate reasonable opportunities for the utilities to obtain such assistance from LLNL or any of the other similarly-resourced and -staffed facilities with high performance computing capability in California or the United States.³ Denial of the application would indicate

² TURN Opening Brief, pp. 30-31.

only that the framework put forward as the CES-21 Project was inadequately supported and suffered from inherent flaws that prevented a commitment of up to \$150 million of ratepayer funds.

II. The Joint Utilities’ Brief Contains New Factual Assertions That Are Inappropriately Presented In Briefs, Contrary To Record Evidence and Prior Commission Decisions, And Otherwise Of Such A Dubious Nature That The Commission Should Recognize Them As A Concession of The Absence of Record Support For The Utilities’ Request.

At first glance, the Joint Utilities’ opening brief might appear to be little more than a repeat of their prepared testimony, as it largely replicates almost word-for-word large passages from that prepared testimony. To the extent it merely rehashes that earlier testimony, the utilities’ brief adds little value to the record before the Commission.⁴

But a closer look reveals numerous misstatements and overstatements in the Joint Utilities’ opening brief, problems so serious that they should raise serious doubts about each utility-made claim in this proceeding.

- The Joint Utilities’ brief makes material changes to their prepared testimony, but without acknowledging or attempting to explain the changes. Whether the Commission deems this an inappropriate attempt to introduce new non-record evidence, or to rely upon a mischaracterization of the record evidence, the results should be the same – the Commission must ignore the new arguments.

³ The Joint Utilities’ opening brief included a reference to a press release regarding a “top 500” ranking of super-computers of the world, despite the fact that this information is not contained in the evidentiary record. Joint Utilities’ Opening Brief, p. 9, fn. 31, citing <http://www.top500.org/lists/2012/06/press-release>. As TURN explains more fully in following sections of this brief addressing similar tactics, the Commission should interpret this reliance on non-record evidence as a tacit admission that the evidentiary record as it exists does not provide adequate support for the relief the utilities seek. Interestingly, though, the actual press release indicates that of the top 500 high performance computing systems, 253 are in the United States. <http://www.top500.org/static/lists/2012/06/PressRelease201206.pdf>. And of those 253, a number are in California and the western United States, including facilities at UCSD, UCLA, Lawrence Berkeley National Laboratory, and the Pacific Northwest National Laboratory, in addition to LLNL. <http://www.top500.org/list/2012/06/100>.

⁴ Since TURN’s opening brief addressed and debunked the arguments presented in the Joint Utilities’ prepared testimony, TURN will not repeat those arguments here.

- Similarly, the Joint Utilities open their brief with a series of claims that their prepared testimony demonstrates that each of the elements under the recently-issued EPIC decision is met here. But the cross-referenced testimony from this proceeding is in some cases devoid of anything resembling such support. In other cases the utilities cite numerous pages of testimony that, upon close review, appear to include a phrase as the only tangent between the EPIC-adopted element and the utilities’ showing here.
- The Joint Utilities present a new claim that the ratemaking proposed in this proceeding is consistent with traditional cost of service ratemaking. If the utilities had made such a claim in their testimony, TURN and other interested parties might have had an opportunity to develop the record with the utilities’ views of what “traditional cost of service ratemaking” might be. But whatever their views might be, the Commission needs to firmly reject any sense that the proposed forecast-free, recorded-cost-recovery-without-reasonableness-review ratemaking is equivalent to “traditional cost of service ratemaking.” The utility proposal warrants any number of labels, but “traditional cost of service ratemaking” is not one of them.

TURN addresses each of these problems more fully in the following sections.

A. The Utilities Make Arguments Contradicted By Their Own Testimony, And Compound The Error By Attempting To Change The Testimony To Better Fit Their Arguments – Whether an Act of Desperation Or An Attempt to Mislead, The Commission Must Firmly Reject Such Inappropriate Tactics.

A central flaw in the Joint Utilities’ showing in this application is their reliance on illustrative examples rather than actual proposed projects. As DRA’s witness very neatly summed it up, “Part of the issue with the application as presented is that it is filled . . . with mays, coulds, possibles.”⁵

The Joint Utilities seem to have finally come to the realization that claims that rely on “mays, coulds, possibles” do not provide the certainty necessary to approve rate recovery of up to \$150 million. So in their opening brief, they attempted to change the

⁵ Hieta, DRA, 2 RT 289, ll. 4-8.

story to better fit their request, even if it no longer fit the evidentiary record. But where, as here, the utility brief is little more than a reformatted version of their prepared testimony, such an attempt is fairly transparent. The Joint Utilities made these new assertions in their opening brief by simply changing key words in passages otherwise quoted verbatim from the prepared testimony. Thus, testimony descriptions that accurately reflected the uncertainty of what “may” happen under the CES-21 Project become assertions with absolute certainty of what “will” occur. Similarly, where the testimony describes “potential” benefits, the brief drops the qualifier with the apparent benefit of making the benefits more real. All of this serves to create a surface appearance of greater certainty regarding such benefits, but none of it has record support.

The Commission should find these attempts to surgically excise such qualifiers and replace them with the appearance of certainty troubling for a number of reasons: Each represents an attempt to introduce new evidence into the record through the utilities’ brief; each is contrary to the record evidence consisting of very clear and unambiguous statements in the Joint Utilities’ prepared and hearing testimony; and together they reflect a pattern of behavior that, if not intended to mislead the Commission, at the very least gives the Commission cause to be concerned with the accuracy and reliability of the Joint Utilities’ statements in this case. TURN submits that the changes do serve one useful purpose, however, as they represent the Joint Utilities’ tacit admission that the evidentiary showing in support of their application was inadequate. The Commission must reject this last-ditch attempt to bolster the appearance of evidentiary support for the Joint Utilities’ request, and base the final decision on the evidentiary record as it exists.

1. The Joint Utilities’ Attempts To Re-Write The Record To Their Liking Were Numerous and Uniformly Inappropriate.

The Joint Utilities repeatedly modified factual statements from their prepared testimony in order to make different factual assertions in their opening brief. In some instances, testimony that very clearly described a possible outcome was cited as the basis for a factual statement describing a far more certain outcome in the brief. For example, according to the brief:

high power computing **will** significantly reduce the time to run simulations and thus help the IOUs be more responsive to the demands of today’s business and regulators.⁶

But the testimony cited as the source for this factual assertion did not say “will,” but rather “may”:

high power computing **may** significantly reduce the time to run simulations and thus help the IOUs be more responsive to the demands of today’s business and regulators.⁷

While the brief is otherwise identical to the testimony on this point, the single word change renders a very different meaning for the entire sentence.

Similarly, the Joint Utilities prepared testimony was rife with references to the uncertainty and lack of assurance that the illustrative projects described in their testimony would be projects actually pursued if the CES-21 Project is approved. But in several instances, the Joint Utilities’ brief describes the illustrative projects as if they were far more certain to be pursued if Commission approval were forthcoming:

One of the initial priorities of CES-21 **will be to consider a project to** augment existing tools and develop new analytical tools for planning necessary to meet California’s energy and environmental goals and policies. ... The CES-21 **will seek to** augment the functionality of existing

⁶ Joint Utilities’ Brief, p. 7, citing Ex. U-1, p. 1-5 [emphasis added].

⁷ Ex. U-1 (Joint Utilities Opening Testimony), p. 1-5 [emphasis added].

models to better represent the complexity and responsiveness of the grid, as well as the range and volume of possible scenarios. The project **should** enhance the incorporation of advanced tools into the ongoing planning process of the Joint Utilities and the California Independent System Operator (CAISO), resulting in significant savings in energy, capacity and grid costs.⁸

Again, the cited testimony tells a very different story, even though it is nearly identical other than the select key word changes made by the authors of the utilities' brief:

The CES-21 Project **may** augment existing tools and develop new analytical tools for planning necessary to develop the electric system envisioned by California's Clean Energy Plan. . . . The CES-21 Project **may** augment the functionality of existing models to better represent the complexity and responsiveness of the grid, as well as the range and volume of possible scenarios. The project **may** enhance the incorporation of advanced tools into the planning process of the IOUs, with significant resulting cost savings in energy, capacity and grid costs.⁹

TURN has attached to this reply brief an appendix listing nine examples of such assertions appearing in the Joint Utilities' brief that materially change the factual statements as compared to the statements in their original form in the utilities' prepared testimony.

2. The Joint Utilities Are Attempting To Re-Write In Their Favor Key Portions Of The Evidentiary Record On Central Disputed Issues In This Proceeding.

The Joint Utilities' modifications of the evidentiary record are not just matters of semantics; there can be no doubt that they represent an attempt to re-write the evidentiary record. One of the criticisms of the CES-21 Project as proposed is the utilities' failure to identify specific projects that would be funded out of the \$150 million to be collected

⁸ Joint Utilities' Brief, p. 12, citing Ex. U-1, p. 1-8 [emphasis added].

⁹ Ex. U-1 (Joint Utilities Opening Testimony), p. 1-8 [emphasis added].

from ratepayers. The record evidence is indisputably clear – the testimony only “describes illustrative examples of potential work that the CES-21 Project may consider to undertake.”¹⁰ As the utilities’ policy witness further emphasized during the hearings, “there are no specific projects being proposed in this application Whether these projects [presented as illustrative examples] will be pursued or not will be up to the board of directors.”¹¹ Furthermore, each of the utilities’ own subject matter witnesses confirmed this fact: there is no certainty at this point that these illustrative examples will result in actual research being done in these areas through the CES-21 Project.¹² It is inconceivable that the utilities now assert, based on the same record, only that these projects will not only be done, but have somehow each obtained a new status as an initial or first priority of the not-yet-in-existence CES-21 board.¹³

The Commission cannot permit the Joint Utilities to re-write the record by changing their own testimony in a last ditch effort to achieve the appearance of better support for the arguments they now wish to make in their opening brief. The new assertions constitute factual evidence appearing for the first time in the Joint Utilities’ brief, rather than during the course of developing the evidentiary record. The Joint Utilities had ample opportunity to submit such evidence as part of their prepared testimony, or during the evidentiary hearings. Instead, they presented different prepared testimony, and emphasized and reiterated the uncertain nature of the projects identified as

¹⁰ Ex. U-1 (Joint Utilities Opening Testimony), p. 2-2 [emphasis added].

¹¹ Cherry, PG&E, 1 RT 36, ll. 12-13 and 20-22 [emphasis added]. As a reminder, this is the board of directors whose decisions are not appealable to anyone. *Id.*, at 27, ll. 26-28.

¹² Mikovits, SDG&E, Wong, PG&E, Alvarez, PG&E, and Sherick, SCE, 2 RT 261, l. 24 to 262, l. 20.

¹³ Joint Utilities Brief, pp. 12, 15, and 17.

“illustrative examples.” The Commission must not permit parties to present new factual assertions in post-testimony and post-hearing pleadings.

Furthermore, the newly-changed assertions directly contradict the related statements made in the Joint Utilities’ own record testimony. As the first example above demonstrates, the Joint Utilities’ prepared testimony describes an outcome that **may** result if the Commission were to approve the utilities’ proposal. The same outcome is described in the Joint Utilities’ brief as something that **will** happen upon Commission approval. Saying something “may” happen is substantially and materially different than saying that it “will” happen. The original version is based on prepared testimony that was subject to cross-examination, and the cross-examination produced testimony further confirming that “may” was the correct descriptor, and that it is incorrect to say any of these projects “will” happen. The Joint Utilities’ revised version appeared for the first time in the Joint Utilities’ brief and contradicts the utilities’ own testimony. Under such circumstances, the Commission must reject the position that relies on the latter.

The Commission should also consider what these changes mean in terms of the overall credibility of the utilities. These were not inadvertent edits or word processing errors – someone decided to change the story as presented in the opening brief, and in each case to cite the testimony as if the story had not changed. And the nine instances TURN has identified suggest a troubling pattern where the desire to attempt to shore up a weak showing was stronger than the commitment to rely on record evidence, or to alert the Commission to the changes that had been made. Whether or not such a pattern of misrepresenting record evidence amounts to an artifice or false statement of fact under the Commission’s Rules of Practice and Procedure, the Commission should recognize

that the tactic calls into question the veracity or accuracy of the utilities' statements more broadly in this proceeding.

Finally, the Commission should recognize the Joint Utilities' ploy for what it is – an attempt to shore up an exceedingly weak case. At some point since the conclusion of the evidentiary hearings, the utilities seem to have decided that if the funding request was to meet with success, their strategy of relying on merely “illustrative” examples of what might (or might not) occur needed to be scuttled in favor of an appearance of more certainty to the proposals for CES-21 projects. So they attempted this post-hearing re-write of the script to create the appearance of such certainty, even if it meant making assertions contrary to the underlying evidentiary record. For the reasons discussed above, the attempted re-write must be rejected.

B. The Joint Utilities' Claim That The Spending Plans for CES-21, Which They Admit Are Devoid of Detail, Meet The Recently-Adopted Standards for The EPIC Investment Plans Is Not Only Far-Fetched But Also Based On A Mischaracterization Of The Evidentiary Record.

The Commission's recent Phase 2 decision in the Electric Program Investment Charge (EPIC) rulemaking laid out a number of elements that a utility-sponsored investment plan would have to include in order to gain Commission approval of that investment plan.¹⁴ The Joint Utilities' opening brief distills this list of EPIC investment plan elements to thirteen bullet points. For each bullet point the utilities provide a footnoted reference to their prepared testimony, with the clear implication that the

¹⁴ D.12-05-037, Ordering Paragraph 12.

testimony meets the standards for the EPIC investment plan.¹⁵ The Commission should reject this cross-referencing exercise as not only meaningless but also, again, misleading.

First, to the extent the EPIC decision adopted “criteria for utility-funded RD&D funding,”¹⁶ those criteria apply to the Commission’s assessment of a utility’s investment plan presented in a formal application. The Commission will then review that investment plan in order to determine if it meets those criteria, resulting in a formal Commission decision.¹⁷ In other words, the EPIC criteria apply to a utility showing required before Commission approval is obtained. This is, of course, a very different decision-making framework than the one the Joint Utilities propose here. For the CES-21 Project, the Joint Utilities have chosen not to present an investment plan, but rather a total cost amount and illustrative use cases. No CES-21 Project investment plan will ever come to the Commission in a formal application, and the Commission will never issue a formal decision on a CES-21 Project investment plan.

Second, the structure of the Joint Utilities’ proposal here runs directly counter to some of the criteria and elements from the investment approval process adopted for EPIC. The utilities claim that their proposed “investment planning and project approval criteria” for the CES-21 Project proposal “fully meets and exceeds the Commission’s criteria” adopted in the EPIC decision.¹⁸ But one of the EPIC criteria is “identifies the amount of funds to be devoted to particular program areas.” The testimony cited as support for this claim that the showing on the CES-21 Program meets this criterion only

¹⁵ Joint Utilities Brief, pp. 3-5.

¹⁶ *Id.*, p. 2.

¹⁷ D.12-05-037, Ordering Paragraphs 11 and 12.

¹⁸ Joint Utilities’ Brief, pp. 2-3.

addresses more general points of the “project selection process and development of strategic plan and annual budgets” by the utilities own accord.¹⁹ An obvious threshold issue is the fact that the CES-21 Program “project selection process” is more theory than reality at this point.²⁰ Even if the Commission chose to overlook this shortcoming, there would be no basis for finding that the adopted criterion from EPIC, which presumes Commission review of an investment plan that identifies the funding for each particular program area before Commission approval of the plan in a formal decision, is met by predictions that such project-specific funding amounts will be forthcoming from a non-Commission process that is not yet underway.

Third, the Commission should again have doubts about the veracity of the utilities’ claims because the Joint Utilities have again resorted to a questionable ploy in presenting their claims. The Joint Utilities wish to leave the Commission with the impression that their prepared testimony sufficiently addresses each of the criteria for the utility RD&D funding from the EPIC decision. But if this is indeed the case, the Joint Utilities must at a minimum point with sufficient specificity to where such testimony appears. Instead, the Joint Utilities often cite most or all of an entire chapter of the direct testimony, and most or all of the supplemental testimony in the footnotes that purportedly cross-reference the EPIC criteria to the prepared testimony.

For example, the criterion “[i]dentifies the amount of funds to be devoted to particular program areas” is, according to the utilities’ brief, supported by nearly the

¹⁹ *Id.*, fn. 7.

²⁰ The investment planning and project approval process will be the subject of the CRADA, which has yet to be negotiated, as implemented by the Board of Directors, which has yet to be appointed. The Joint Utilities propose that the Commission have no review of the CRADA once finalized, or oversight of the acts of the Board of Directors.

entirety of Chapter 1 of the utilities' direct testimony, and nearly the entirety of the supplemental testimony.²¹ But other than a single reference to “cost” being a part of one of the nine factors to be included in future business cases for each project,²² TURN found nothing in the supplemental testimony that would address “the amount of funds to be devoted to particular program areas.” Similarly, it is not at all clear what portion of the testimony in Ex. U-1 (pp. 1-3 to 1-15) that the Joint Utilities contend addresses this criterion, as that material has nothing to do with anything related to that criterion.

The Joint Utilities cite seven pages of their prepared testimony as the source for their showing that correlates to each of three criteria from the EPIC decision.²³

- Takes into account and avoids duplication of the research, development, and demonstration activities the utilities are already undertaking as part of their approved energy efficiency and demand response portfolios;
- Identifies the type of funding mechanisms (grants, loans, pay-for output, etc.) to be used for each investment area; and
- Establishes eligibility criteria for award of funds in particular areas, as well as limitations for funding (per-project, per-awardee, matching funding requirements, etc.) and other eligibility requirements (technologies, approaches, program areas, etc.).

But the citations to the prepared testimony overstate the support that may be found there, to say the least. One of the four bullet points on one of the pages of direct testimony lists “avoidance of duplicative research or funding” as a governance task for the CES-21 Board of Directors.²⁴ The same broad assertion (“ensuring that LLNL services do not duplicate existing services or projects”) appears again as a parenthetical within a bullet

²¹ Joint Utilities Brief, p. 3, fn. 7.

²² Ex. U-2 (Joint Utilities' Supplemental Testimony), p. 2, l. 33 (“... (8) cost, staffing requirements and responsibilities”)

²³ Joint Utilities Brief, p. 3, fns. 9-11.

²⁴ Ex. U-1 (Joint Utilities Direct Testimony, p. 1-13, ll. 6-10.

point a few pages later.²⁵ And the citation to the supplemental testimony is similarly overly broad, as the reference to “avoidance of duplicative research” merely appears as one of the eight items to be assessed in a business case.²⁶

According to the Joint Utilities’ brief, the “funding mechanisms” and “eligibility requirements” elements of the EPIC criteria are also addressed in the same seven pages of prepared testimony.²⁷ But TURN found nothing on pages 1-13 to 1-15 of the direct testimony, or anywhere in the supplemental testimony, that could be reasonably construed as addressing the funding mechanisms and eligibility requirements.

The Commission must firmly reject this tactic that pervades the Joint Utilities’ attempt to cross-reference their showing here with the elements and criteria adopted in the recent EPIC decision. It is patently unfair to the Commission and to other parties to permit the utilities to present such poorly-supported arguments as a new contention appearing for the first time in the Joint Utilities’ brief. Furthermore, the Commission has long recognized the inappropriateness of putting a party in the position of having to prove or disprove a negative.²⁸ That is the upshot of the utilities’ tactic here – TURN is required to comb through the cited testimony and argue about what is NOT there. Had the utilities truly believed that their arguments had record support, they would have cited more specific passages from their testimony (rather than entire chapters) and explained

²⁵ *Id.*, p. 1-15, ll. 6-10.

²⁶ Ex. U-2 (Joint Utilities Supplemental Testimony), p. 2, ll. 30-31.

²⁷ Joint Utilities Brief, p. 3, fns. 10-11.

²⁸ *See, for example*, D.94-03-050 (in A.91-04-003 – PG&E ECAC), 1994 Cal. PUC LEXIS 221, *26 (“We do not expect PG&E to prove a negative.”); D.99-04-068 (in A.95-10-024, PG&E Holding Company) 1999 Cal. PUC LEXIS 242, *14 (“We do not expect PG&E to disprove a negative.”); and D.09-04-036 (in C.05-11-011, UCAN v. SBC) 2009 Cal. PUC LEXIS 212, *144 (“In order to prevail in this proceeding UCAN will not be required to prove the negative proposition that none of the circumstances allowing a carrier to curtail warm line service apply to AT&T.”)

how those passages support their argument. Once again, the Commission must understand that the Joint Utilities' failure to do so is representative of the weakness of their arguments and the record they created to support those arguments.

C. The Forecast-Free, Reasonableness Review-Free, Recorded Cost Ratemaking Proposed By The Joint Utilities Is Worthy Of A Number Of Labels, But “Traditional Cost Of Service Ratemaking” Is Not One Of Them.

Another claim that appears for the first time in the Joint Utilities' Brief is that permitting the utilities to avoid any subsequent reasonableness review is “consistent with traditional cost of service ratemaking.”²⁹ Missing from the utilities' argument is any explanation of what they are deeming “traditional cost of service ratemaking.”

The Commission has recognized the importance of a reasonable forecast when it comes to setting rates on a “cost of service” basis. “Traditional cost of service ratemaking” has been described as providing for Commission oversight of the cost of owning and operating a facility.³⁰ And the “costs” that are subject to cost-of-service ratemaking “are routinely forecast.”³¹ “A relatively accurate cost estimate is therefore an important element in ensuring that the costs ratepayers ultimately bear under cost of service are limited to those that are truly reasonable.”³² This is the cost of service context

²⁹ Joint Utilities Brief, p. 44.

³⁰ D.07-12-052 (in R.06-02-013 Long Term Procurement Plan), 2007 Cal. PUC LEXIS 606, *321. The context of this discussion in the proceeding suggests that this view was put forward at least initially by PG&E.

³¹ D.01-02-075 (A.99-03-049 SoCalGas CEMA), 2001 Cal. PUC LEXIS 143, *52.

³² D.10-04-052 (A.09-02-019, PG&E Solar Photovoltaic Program) 2010 Cal. PUC LEXIS 137, *36. PG&E's recovery of O&M costs associated with the PV programs addressed in that decision were subject to a reasonableness review. *See* Ordering Paragraph 7.

the Commission had in mind when it recently reiterated that it would “require that utilities demonstrate the reasonableness of their requests” for RD&D funding.³³

Once again, the Joint Utilities’ position is utterly lacking in record support. In order to have a reasonable basis for claiming consistency with “traditional cost of service ratemaking,” the utilities would need to be able to point to reasonable cost estimates they had presented for any project they might pursue. But there are no such estimates, as their policy testimony readily concedes: “[T]he use cases presented are illustrative and are not defined at the level of detail required to perform a traditional cost-benefit analysis.”³⁴ In the discussion of the CyberSecurity illustrative case, the omission of cost information was made even clearer: “Because no specific cyber security projects have yet been proposed to the CES-21 governance board the traditional approach for evaluating a project proposal on the basis of cost is premature.”³⁵ TURN submits that the evidentiary record supports a reasonable presumption that the same explanation would apply to each of the other illustrative cases; the utilities did not provide the type of information to permit “evaluating a project proposal on the basis of cost.”

The Commission should also consider the role that cost recovery risk plays in cost-of-service ratemaking. Under traditional cost-of-service ratemaking, the utility’s authorized rate of return is set higher than the then-current Treasury bill rate in part because the utility faces a cost recovery risk. Where rates are set based on forecasted costs (such as in a general rate case), the utility faces the risk that actual costs might vary

³³ D.10-09-018 (A.09-09-019 PG&E Compressed Air Energy Storage), pp. 6-7, as cited in Ex. U-3 (Joint Utilities Rebuttal Testimony), p. 1-16.

³⁴ Ex. U-3 (Joint Utilities Rebuttal), p. 1-15.

³⁵ *Id.*, p. 3-12.

from the forecast during the period covered by the forecast. And where rates are set based on recorded costs, the utility cost recovery risk typically comes in the after-the-fact reasonableness review of those recorded costs. But there can be no doubt that “traditional cost of service” ratemaking includes some level of cost recovery risk.

Here the Joint Utilities have virtually eliminated any such risk. The utilities would be entitled to rate recovery of all recorded costs, whether associated with the CES-21 Project itself or their own internal costs charged to the project. There is no forecast risk, as there are no forecasts but rather spending caps.³⁶ There is no reasonableness review risk, as the Joint Utilities have provided themselves “full recovery” in rates of all verified costs “without further reasonableness review or restriction.”³⁷ In other words, if they spend it, they get it in rates, no questions asked. The absence of any meaningful cost recovery risk further establishes that this is not “traditional cost of service ratemaking.”

III. The Joint Utilities Ask The Wrong Question – If The Proposed Governance Process Would Require The Commission to Unlawfully Delegate Its Authority, No Amount Of Mitigation Measures Can Repair That Defect.

The Joint Utilities’ brief claims that the proposed “governance process” will be “open and consensual”³⁸ such that the Commission’s role overseeing CES-21 programs and expenditures is “consistent with Commission precedents.”³⁹ There are two central flaws to these arguments. First, they largely avoid the more central question of whether

³⁶ The risk that any of the Joint Utilities might exceed its spending cap should be treated as non-existent, given that each utility effectively wields veto power with regard to providing funding for any project that comes before the CES-21 Board of Directors.

³⁷ Ex. TURN-4 (TURN Testimony of Thomas Long), p. 4, citing Ex. U-1 (Joint Utilities’ Direct Testimony), pp. 3-2 and 3-4.

³⁸ Nowhere in their brief do the Joint Utilities explain what is “consensual” about their proposed process, such as who is giving consent and what is the subject of that consent.

³⁹ Joint Utilities’ Brief, p. 32.

the delegation of Commission authority to the proposed Board of Directors for the CES-21 Project is permissible. And in describing the measures that they seem to believe sufficiently mitigate the untoward aspects of the proposed delegation, the Joint Utilities only further support TURN's argument that adoption of the proposed governance structure would constitute legal error. The Commission cannot delegate matters that necessarily require the exercise of judgment and discretion, as distinct from ministerial tasks. And according to the Joint Utilities' own descriptions, many of the matters that they ask the Commission to delegate to the Board of Directors are fundamentally and inalterably matters requiring the exercise of judgment and discretion.

Second, the claims about consistency with Commission precedents ignore a key distinction. The EPIC governance process is premised on the Commission first reviewing and formally approving an investment plan that is to include a detailed set of criteria for any future funding decisions. The governance process here is premised on the full Commission never seeing or formally approving any such investment plan. To say that the Commission can delegate creation of the investment plan because in the EPIC decision it delegated implementation of a Commission-approved investment plan is to attempt to wish away a critical distinction.

A. The Joint Utilities' Brief Highlights The Elements Of The CES-21 Proposal That Require Impermissible Delegation Of Commission Authority.

The Joint Utilities' brief identifies a number of "key elements" they ask the Commission to consider in determining whether the proposed governance structure for the CES-21 Project meets "the governance and Commission oversight requirements for

utility energy RD&D.”⁴⁰ Many of these “key elements” stand as clear examples of impermissible and inappropriate delegation.

- “[T]he Joint Utilities and LLNL will negotiate and enter into a Cooperative Research and Development Agreement (CRADA), which will be consistent with consistent with the provisions in the CES-21 Application and subject to final approval by the Board of Directors for the CES-21.”⁴¹ Not mentioned explicitly, but just as important here, the CRADA would set key terms and conditions for services performed by LLNL,⁴² but the CRADA would not be subject to final approval of the Commission.⁴³
- “[T]he Board of Directors will approve a strategic plan [and] annual budgets. . . .”⁴⁴ And “the Board will review projects in the context of an overall strategic plan and annual budget that will be developed to guide investments and expenditures.”⁴⁵ It is ultimately up to the Board to determine whether there is a “need” for the proposed research, that is, “a demonstrated need for the benefit of one or more of the utilities.”⁴⁶ Omitted from the version in the Joint Utilities’ brief is the key fact that the three utilities will make up a majority of the Board’s voting members.⁴⁷
- The Board will “mak[e] available the results and benefits of the research projects to interested parties as appropriate and consistent with ensuring that the benefits accrue primarily for the benefit of utility customers funding the research.”⁴⁸ Thus it will be up to the Board to determine the appropriateness of making results more broadly available.⁴⁹

⁴⁰ *Id.*, p. 33.

⁴¹ *Id.*

⁴² Ex. U-1 (Joint Utilities Direct Testimony), p. 1-14.

⁴³ Ex. U-1 (Joint Utilities Direct Testimony), p. 1-12; Cherry, Joint Utilities, 1 RT 54, ll. 4-9.

⁴⁴ Joint Utilities’ Brief, p. 33.

⁴⁵ *Id.*, p. 34.

⁴⁶ *Id.*

⁴⁷ Ex. U-2 (Joint Utilities’ Supplemental Testimony), p. 1.

⁴⁸ Joint Utilities’ Brief, p. 35 [emphasis added].

⁴⁹ TURN is aware of nothing in the record that explains how the Board would make such a determination, such as the criteria the Board would consider. TURN suspects that this is another element that would be governed by the CRADA that the Commission would never approve, and implemented by the Board with a utility-appointed majority supported by a LLNL-dominated

Each of these self-described “key elements” of the Joint Utilities’ proposal represents a level of delegation that the Commission has recognized is at least inappropriate. As SCE recently argued, the general rule is that “powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of public trusts and cannot be surrendered or delegated to subordinates in the absence of statutory authorization.”⁵⁰ The Commission’s most recent statement on this issue correctly recognizes the distinction between such impermissible delegation and assigning ministerial tasks to another agency:

This distinction is key: while the Commission **cannot delegate its authority and responsibility to determine recoverable costs, program rules, regulations and policies**, it does have authority to transfer the day to day administration of a program, as it does with a variety of programs. The Commission can and should accept the input of the Energy Commission in its oversight, planning, rule and policy making, but can and should maintain appropriate responsibility for final authority of the program, particularly in so far as policy and programmatic matters and final funding levels are concerned.⁵¹

The Joint Utilities’ own description of their proposal, as first presented in prepared testimony and as repeated largely verbatim in their opening brief, leaves no doubt that the proposal would delegate “authority and responsibility to determine recoverable costs, program rules, regulations and policies” to the CES-21 Board of Directors. Such matters require the “exercise of judgment or discretion” that the California Supreme Court ruled “cannot be surrendered or delegated to subordinates in

staff. TURN Opening Brief, p. 18, citing Ex. U-2 (Joint Utilities’ Supplemental Testimony, pp. 2-3).

⁵⁰ *Cal. Sch. Employees Assn. v. Personnel Comm’n* (1970) 3 Cal. 3d 139, 144, as quoted in SCE Application for Rehearing of D.12-05-037 (EPIC Phase 2 Decision in R.11-10-003), July 2, 2012, pp. 14-15.

⁵¹ D.11-12-035 (EPIC Phase 1 Decision in R.11-10-003), p. 23 [emphasis added].

the absence of statutory authorization.”⁵² Whatever the Joint Utilities might mean in describing the proposed governance structure as “open and consensual,” the Commission must reject it because that same governance structure is premised upon an inappropriate and unlawful delegation of the Commission’s authority and responsibility.

B. In Order To Favorably Compare The Recent EPIC Decision With Their Request Here, The Joint Utilities Had To Ignore The Central Features Of The EPIC Funding Structure.

The Commission should reject as utterly unfounded the Joint Utilities’ argument that the governance structure proposed here is generally consistent with that recently approved in the EPIC decisions. The Commission made very clear in D.12-05-037 that it was retaining its authority over matters that rely on the exercise of judgment or discretion, and was only delegating to the California Energy Commission the day-to-day administration of the program.

- The Commission noted that, unlike the California Institute for Climate Solutions (CICS), EPIC is not a “standalone entity.”⁵³ The CES-21 Project would be a standalone entity.
- The proposed governance structure for use of EPIC funds has the Commission “retain the policy and funding oversight role, consistent with our customary regulatory role where utility ratepayer funds are involved.”⁵⁴ The CES-21 Project would have the policy and funding oversight role performed by the Board of Directors.⁵⁵
- For EPIC, the Commission would regularly review and approve an investment plan. “[W]e will have both the CEC and the utilities present their investment plans as part of the EPIC at the same time, for joint consideration by the

⁵² *Cal. Sch. Employees Assn. v. Personnel Comm’n* (1970) 3 Cal. 3d 139, 144.

⁵³ D.12-05-037, p. 20.

⁵⁴ *Id.*, p. 22.

⁵⁵ Under the Joint Utilities’ proposal, the Board will control all decision-making associated with the CES-21 Project, including project approval, budget, and need. Cherry, Joint Utilities, 1 RT 4, ll. 24-26.

Commission. Once adopted [by the Commission], the CEC’s investment plan must be sufficiently detailed to constitute a grant to the CEC by this Commission of ratepayer funds, and must lay out all of the rules under which the CEC will make further grants and awards of funds.”⁵⁶ The Joint Utilities’ proposal here would assign to the Board of Directors the development and approval of the investment plan itself.

- The staff proposal that the Commission considered in the EPIC rulemaking proposed seven specific elements that an administrator would be required to address in the proposed investment plan (before Commission approval of that plan), including the amount of funds to be devoted to particular program areas, the policy justification for the proposed allocation of funding, and eligibility criteria for an award of funds.⁵⁷ The Commission explicitly embraced this element of the proposal:

We also find the requirements in the staff proposal for the elements that the administrators should propose in each investment plan, as well as the metrics to be included, are reasonable and we will adopt them. In addition, as detailed in the staff proposal previously, the administrators are required to propose in detail, in each investment plan, the criteria that they will use to evaluate individual proposals for EPIC funding.⁵⁸

- The Commission specifically addressed competitive solicitation plans, directing that “in each investment plan, the administrators should include a detailed set of criteria upon which competitive bids will be evaluated.”⁵⁹ The CES-21 Project proposal not only leaves such criteria to the Board of Directors, but also the more fundamental question of whether or not LLNL should be treated as a “sole source” provider.⁶⁰

⁵⁶ D.12-05-037, p. 28 [emphasis added].

⁵⁷ D.12-05-037, p. 23.

⁵⁸ *Id.*, at 30.

⁵⁹ *Id.*, at 37.

⁶⁰ Joint Utilities’ Brief, p. 35. “The Board will evaluate whether LLNL is a competitive or unique source of services or projects ... using normal ‘sole source’ procurement criteria. Toward that objective, the Board will evaluate projects or expenditures to determine whether other potential providers, such as other research institutions, should have an opportunity to offer services to the utilities comparable to those provided by LLNL under the Application.” [Emphasis added.] In other words, if the Board of Directors determines that LLNL is a “unique source of services or projects,” there would be no competitive solicitation for that service or project. But the Joint Utilities describe a process in which LLNL plays a pervasive role (to say the least) in determining what projects get to the Board of Directors for consideration, with a “Research Director” from

- For EPIC, “the investment plan consideration by the Commission will be conducted in an application process and will include all of the opportunities for stakeholder input that a normal Commission proceeding would entail.”⁶¹ For CES-21, the actual investments will not be subject to review in a CPUC application process; review will occur through as-yet undefined opportunities for stakeholder input to be further defined by the Board of Directors once its own decision-making process is established.
- Finally, Ordering Paragraph 12 of D.12-05-037 included a detailed list of elements that shall be included in each administrator’s application for a triennial investment plan, including: identification of the amount of funds to be devoted to particular program areas; eligibility criteria for award of funds in particular areas; and metrics against which the investment plan’s success should be judged. For EPIC, the Commission will consider and address these elements before approving the investment plan and before the administrators implement their plan consistent with the Commission’s decision. For CES-21, the Commission may well never have the opportunity to consider and address these elements under the proposed governance structure.

These elements of the funding structure confirm that with the EPIC program the Commission has not sought to delegate its “authority and responsibility to determine recoverable costs, program rules, regulations and policies.”⁶² And it is the presence of those elements, all subject to a Commission application proceeding and a Commission decision before the administrators are authorized to use the funds, that confirm that the Commission has not overstepped the bounds of its authority to delegate. But these are also the very elements that are absent from the CES-21 Project proposal here. Instead, the Joint Utilities submit that the Board of Directors will eventually address these elements, and whatever they choose to do on that score will not be subject to subsequent

LLNL’s staff for every proposed research project, plus an Executive Director appointed from LLNL-recommended candidates. Joint Utilities Brief, pp. 36-37. Thus LLNL plays a prominent role in the process of determining whether it has the facilities and resources to handle a proposed project. Part of the reason the Commission should not delegate matters such as establishing a competitive solicitation is the need to ensure that the resulting solicitation would indeed be appropriately competitive.

⁶¹ D.12-05-037, p. 75.

⁶² D.11-12-035 (EPIC Phase 1 Decision in R.11-10-003), p. 23.

full Commission review or approval. This is precisely the delegation of authority that is unlawful.

C. The Approval Of The Stewardship Council Does Not Provide Support For The Delegation of Authority The Utilities Seek To Implement Here.

The Commission should find unconvincing the Joint Utilities' claim that the Stewardship Council approved as an outgrowth of the PG&E bankruptcy settlement has a governance process that is "comparable" to the governance process proposed for the CES-21 Project.⁶³ The entirety of the utilities' discussion on this point is set forth in three sentences in the brief, without any further explanation of what responsibilities the Commission delegated to the Stewardship Council or the circumstances surrounding that delegation. As TURN's opening brief noted, the bulk of ratepayer funds that might be spent pursuant to actions of the Stewardship Council will first be subject to Commission formal review and approval, in the form of a Section 851 application.⁶⁴ Furthermore, the absence of any voting majority for the utility-appointed members of the Stewardship Council, and the reliance on consensus decision-making are obvious and important governance distinctions that the Joint Utilities failed to address in their haste to claim that the experience with the Stewardship Council means "[t]he CES-21 governance process is not ground breaking."⁶⁵

Finally, the Joint Utilities' logic is flawed, as they seem to assume that the delegation that occurred with regard to the Stewardship Council confirms that the Commission can delegate decision-making to the Board of Directors for the CES-21

⁶³ Joint Utilities' Opening Brief, pp. 39-40.

⁶⁴ TURN Opening Brief, p. 23.

⁶⁵ Joint Utilities' Opening Brief, p. 39.

Project. Even if the Commission assumes that the same degree of delegation was involved with the work of the Stewardship Council, that does not mean the delegation for the Stewardship Council was permissible. Rather, it only means that the Commission may have earlier overstepped the bounds of appropriate delegation in a proceeding in which there is nothing to indicate that the question of delegation was raised by any party or considered and addressed by the agency. But the Commission cannot extend its authority based on having reached an erroneous but unchallenged conclusion about the extent of its delegation authority in an earlier decision. Rather than rely on the Stewardship Council experience as support for anything here, the Commission should focus on the evidentiary record established in this proceeding and its own recent decisions directly addressing the limits of its delegation authority.

IV. Conclusion

If the Joint Utilities decided they were in the market for upgrading their transportation options, would they actually expect the Commission to approve purchasing a Maserati? Certainly the Maserati dealer could claim that the car would be the most powerful available, and would tout its unique capabilities. But before committing to the purchase, wouldn't the Commission expect the Joint Utilities to more fully vet the options?

If the transportation needs could be met by a number of different transportation options, only some of which require the high-powered capabilities of the Maserati, wouldn't the high-end sports car be overkill? After all, if the utilities need a more efficient commuting option, a Maserati may provide no advantage (other than bragging rights) over a much cheaper option. And even if the Joint Utilities convinced themselves

that a high-end sports car is the best answer to all of their evolving transportation needs, wouldn't the Commission expect the Joint Utilities to at least talk to the Ferrari and Lamborghini dealers to see if they could offer access to a similar car with more favorable terms and conditions?

The Joint Utilities seem to have committed to the CES-21 Project based on little more than LLNL's pitch and other influential exhortations. The evidentiary record developed since then, including documentation of the flawed process that preceded the formal application, demonstrates that there is not sufficient support that would warrant committing \$150 million of ratepayer funds. Furthermore, the proposed delegation of authority to the proposed CES-21 governing board would constitute legal error. The Commission must deny the application.

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Respectfully submitted,

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APPENDIX TO TURN REPLY BRIEF

CHANGED CHARACTERIZATIONS IN JOINT UTILITIES' OPENING BRIEF AS COMPARED TO JOINT UTILITIES' PREPARED TESTIMONY

1. Joint Utilities' Opening Brief, p. 7: “Third, high power computing **will** significantly reduce the time to run simulations and thus help the IOUs be more responsive to the demands of today's business and regulators.” [Citing page 1-5 of Ex. U-1, Joint Utilities' Direct Testimony]

Ex. U-1, Joint Utilities' Direct Testimony, p. 1-5: “Third, high power computing **may** significantly reduce the time to run simulations and thus help the IOUs be more responsive to the demands of today's business and regulators.”

2. Joint Utilities' Opening Brief, p. 7:

“Access to the high power computing capabilities of LLNL **will** help the IOUs and policy makers analyze and understand the complex issues presented by California's 21st century energy and environmental goals, including reducing greenhouse gas emissions, improving the safety and reliability of the electric grid and gas pipeline system, reducing energy costs, and providing customers with greater choices to manage their energy usage.” [Citing page 1-5 of Ex. U-1, Joint Utilities' Direct Testimony]

Ex. U-1, Joint Utilities' Direct Testimony, p. 1-5: “Access to the high power computing capabilities of LLNL **may** help the IOUs and policy makers analyze and understand the complex issues presented by California's Clean Energy Plan.”

3. Joint Utilities' Opening Brief, p. 7

“Further, the time savings **will** allow for more granular analysis of the data and lead to different conclusions, better policy choices and, most importantly, cost savings.” [Citing pages 1-5 to 1-6 of Ex. U-1, Joint Utilities' Direct Testimony]

Ex. U-1, Joint Utilities' Direct Testimony, p. 1-5: “Further, the time savings **may** allow for more granular analysis of the data and could lead to different conclusions, better policy choices and, most importantly, cost savings.”

4. Joint Utilities' Opening Brief, p. 12

CES-21 **would** facilitate more accurate estimates of load following requirements, and resource need.... This type of dynamic simulation **would** result in more accurate estimates of the operationally flexible capacity needed to integrate renewables. [Citing page 3-2 of Ex. U-3, Joint Utilities' Rebuttal Testimony]

Ex. U-3, Joint Utilities' Rebuttal Testimony, p. 3-2: CES-21 **could** facilitate more accurate estimates of load following requirements, and resource need.... This type of dynamic simulation **should** result in more accurate estimates of the operationally flexible capacity needed to integrate renewables.

5. Joint Utilities’ Opening Brief, p. 13

CES-21 **would** help improve the modeling of transactions with other states or balancing authorities to better understand potential over- generation conditions created by higher levels of renewable generation, and alternatives to manage those conditions. [Citing page 3-2 of Ex. U-3, Joint Utilities’ Rebuttal Testimony]

Ex. U-3, Joint Utilities’ Rebuttal Testimony, p. 3-2: CES-21 **could** help improve the modeling of transactions with other states or balancing authorities to better understand potential over generation conditions created by higher levels of renewable generation, and alternatives to manage those conditions.

6. Joint Utilities’ Opening Brief, p. 13

CES-21 **would** assist in evaluating the effectiveness of different alternatives to reduce flexible capacity deficiencies identified by CAISO’s renewable integration study. [Citing page 3-3 of Ex. U-3, Joint Utilities’ Rebuttal Testimony]

Ex. U-3, Joint Utilities’ Rebuttal Testimony, p. 3-3: CES-21 **could** assist evaluating the effectiveness of different alternatives to reduce flexible capacity deficiencies identified by CAISO’s renewable integration study.

7. Joint Utilities’ Opening Brief, p. 15

“One of the first priorities of CES-21 will be to consider a research project to develop flexibility metrics and standards to guide the planning and operation of California’s electric grid in a future where a large portion of the state’s electric supply is provided by resources that offer little or no operating flexibility. Specifically, this CES-21 project **will seek** to build on efforts by the North American Electric Reliability Council (NERC), the Western Electricity Coordinating Council (WECC), the Lawrence Berkeley National Laboratory, CAISO, and other stakeholders to consider the needs of the entire California and Western electric grid in the face of changing policy, climate, and technology.” [Citing page 1-8 to 1-9 and 2-10 to 2-12 of Ex. U-1, Joint Utilities’ Direct Testimony]

Ex. U-1, Joint Utilities’ Direct Testimony, pp. 1-8 to 1-9:⁶⁶ **“The CES-21 Project may seek** to develop flexibility metrics and standards to guide the planning and operation of California’s electric grid in a future where a large portion of the state’s electric supply is provided by resources that offer little or no operating flexibility. Specifically, the CES-21 Project **may be able to** build on efforts by the North American Electric Reliability Corporation (NERC), the Western Electricity Coordinating Council (WECC), the

⁶⁶ The brief does not directly quote from any passage in pages 2-10 to 2-12. Those pages of testimony, in the section entitled “Electricity Grid Flexibility Metrics and Standards,” include statements such as “the new metrics **might** capture the relationship between the amount of flexible capacity available to a system and the degree of variability and forecast uncertainty of that system’s combined load and variable generation,” and a description of “three **possible** additional performance metrics, which **could** be considered when analyzing alternative solutions.” Ex. U-1, p. 2-11 [emphasis added].

Lawrence Berkeley National Laboratory, CAISO, and other stakeholders to consider the needs of the entire system in the face of changing policy, climate, and technology.”

8. Joint Utilities’ Opening Brief, p. 17

“**One of the initial priorities of CES-21 will be to consider a research project to develop methods** to increase the analytical capabilities of the IOUs to monitor and control the bulk power system, including managing intermittent resources effectively. The potential benefits from this project **would** include [four listed].” [Citing page 1-10 of Ex. U-1, Joint Utilities’ Direct Testimony]

Ex. U-1, Joint Utilities’ Direct Testimony, p. 1-10: “**The CES-21 Project may be able to develop methods** to increase the analytical capabilities of the IOUs to monitor and control the bulk power system, including managing intermittent resources effectively. The potential benefits from these activities **could** include [same four listed].”

9. Joint Utilities’ Opening Brief, p. 19

“[T]here are at least four benefits associated from this use case scenario. Ratepayers **will benefit** from [cites 4 benefits].” [Citing page 2-14 of Ex. U-1, Joint Utilities’ Direct Testimony]

Ex. U-1, Joint Utilities’ Direct Testimony, p. 2-14: “The CES-21 Project may be able to develop methods to increase the analytical capabilities of the IOUs to monitor and control the bulk power system, including managing intermittent resources effectively. The **potential benefits** from these activities **could** include [cites same 4 benefits].”