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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of Its Proposals and Cost Recovery for Improvements to the Click-Through Authorization Process Pursuant to Ordering Paragraph 29 of Resolution E-4868. (U39E.)

Application 18-11-015

And Related Matters.

Application 18-11-016
Application 18-11-017

**ASSIGNED COMMISSIONER'S FIRST AMENDED
SCOPING MEMO AND RULING**

Pursuant to Public Utilities (Pub. Util.) Code Section 1701.1 and Article 7 of the California Public Utilities Commission's Rules of Practice and Procedures (Rules), this First Amended Scoping Memo and Ruling modifies the May 27, 2020 filed Scoping Memo and Ruling and sets forth revisions to the issues, schedule and other matters necessary to resolve these consolidated proceedings, Application (A.) 18-11-015, A.18-11-016, and A.18-11-017.

1. Background

On August 25, 2017, the California Public Utilities Commission (the Commission) issued Resolution E-4868 in response to the Click-Through Advice Letters filed by Pacific Gas and Electric (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E) (collectively referred to herein as the IOUs), on January 3, 2017. Ordering Paragraph 29 of

Resolution E-4868 required each of these IOUs to file individual applications for approval of cost estimates and proposed improvements and/or enhancements to the functionality of the click-through electronic signature authorization process utilized by customers to authorize these IOUs to share a customer's energy data with third party Demand Response Providers.¹ The required applications were to be filed by PG&E, SCE, and SDG&E within fifteen (15) months of the issuance of Resolution E-4868.²

In compliance with Resolution E-4868, on November 26, 2018, the respective IOUs timely filed the following:

- *Application Of Pacific Gas & Electric Company For Approval Of Cost Recovery And Improvements To Its Click-Through Process, A.18-11-015 (PG&E Application);*
- *Application Of Southern California Edison Company (U338E) In Compliance with Order Paragraph 29, Resolution E-4868, Seeking Cost Recovery For Improvements To the Click-Through Authorization Process, A.18-11-016 (SCE Application); and*
- *Application of San Diego Gas & Electric Company (U902E) Requesting Approval And Funding For Improvements To Click-Through Process, In Compliance with Resolution E-4868, A.18-11-017 (SDG&E Application).*

Thereafter, Commissioner Liane M. Randolph and Administrative Law Judge (ALJ) Dan Burcham were assigned to each of the IOUs' Application proceedings on December 14, 2018.

Protests and/or responses to the PG&E and SCE Applications (A.18-11-015 and A.18-011-016) were filed by Mission: data Coalition, the Commission's

¹ The existing approval process allows the IOUs to release a customer's energy data to third party demand response providers subject to Commission privacy rules reflected in existing IOU Electric Rules: PG&E Rules 24, SCE Rule 25, and SDG&E Rule 33 as applicable; *See also* Decision 11-07-056.

² Commission Resolution E-4868, Ordering Paragraph 29 at 105.

Public Advocates Office, and OhmConnect, Inc. in the respective Application proceeding. On April 18, 2019, Small Business Utility Advocates was granted party status in the PG&E and SCE Application proceedings.

Protests and/or responses to the SDG&E Application (A.18-11-017) were filed by Mission: data Coalition, Home Energy Analytics, the Commission's Public Advocates Office, and OhmConnect, Inc. Small Business Utility Advocates' motion seeking party status is pending.

Three (3) separate prehearing conferences (PHC) were held for each of the three IOUs' Application proceedings on April 26, 2019, before ALJ Dan Burcham. Thereafter, on September 17, 2019, Commissioner Martha Guzman-Aceves was assigned in place of Commissioner Liane M. Randolph as to each of the three (3) above captioned proceedings. ALJ Andrea D. McGary was assigned to the three (3) proceedings on November 5, 2019, in place of ALJ Dan Burcham. ALJ Jessica T. Hecht was co-assigned to these proceedings on September 30, 2020.

On December 5, 2019, ALJ McGary issued a ruling and consolidated the three IOUs' Application proceedings, A.18-11-015, A.18-11-016, and A.18-11-017.

On July 1, 2020, a Case Management Conference (CMC) was held. In advance of the CMC, on June 9, 2020, the IOUs filed a Joint Case Management Statement (Joint Case Management Statement), and on June 10, 2020, Mission: data Coalition and OhmConnect, Inc. also filed their respective Case Management Statements.

On July 13, 2020, Mission: data Coalition, California Energy Storage Alliance, Home Energy Analytics, OhmConnect, Inc., and California Efficiency + Demand Management Council (collectively referred to herein as Joint

Responders) filed a Joint Response to the June 9, 2020 Joint Case Management Statement (Joint Response).

On July 15, 2020, the IOUs filed a motion seeking leave to respond to the Joint Response (IOUs' Motion). Objections to the IOUs' Motion were filed by the Joint Responders on July 20, 2020. On July 22, 2020, ALJ McGary issued a ruling, denying in part and granting in part, the IOUs' Motion.

All of the filings in these consolidated proceedings between June 9, 2020 and September 18, 2020, collectively raised issues regarding inclusion and/or exclusion of Issue 12 as set forth in the May 27, 2020 Scoping Memo: *Should the IOUs current click-through programs for Demand Response Providers be expanded to include other distributed energy resource and energy management providers?*³ (Scoping Memo Issue 12).

On September 16, 2020, ALJ McGary issued a ruling setting the proceeding schedule for the remainder of these consolidated proceedings (Scheduling Order). Thereafter, ALJ McGary issued a ruling ordering the parties to file supplemental briefs on their respective positions regarding Scoping Memo Issue 12.⁴ A Status Conference was held on October 8, 2020, in response to the parties' requests to modify the schedule for these consolidated proceedings.⁵

Based on the review of the recent development and record in these consolidated proceedings, I adopt these amended issues and amended schedule for these proceedings, as set forth below in this First Amended Scoping Memo and Ruling.

³ See May 27, 2020 Assigned Commissioner's Scoping Memo and Ruling, at 5.

⁴ See August 28, 2020 E-mail Ruling Ordering Supplemental Briefing On Scoping Memorandum Issue Item 12.

⁵ See October 13, 2020 Reporter's Transcript of October 8, 2020 Status Conference.

2. Issues

Scoping Memo Issue 12 previously set forth in the May 27, 2020 Scoping Memo (*Should the IOUs current click-through programs for Demand Response Providers be expanded to include other distributed energy resource and energy management providers?*) is beyond the scope of these proceedings as defined by Ordering Paragraph 29 of Commission Resolution E-4868 and will be excluded from the scope of these consolidated proceedings. Accordingly, the amended issues to be determined in these consolidated proceedings are as follows:

1. Are the click-through enhancements proposed in PG&E's Application just and reasonable?
2. Do the click-through enhancements proposed in PG&E's Application comply with Commission Resolution E-4868, Ordering Paragraph 29?
3. Do the click-through enhancements proposed in PG&E's Application comply with current Commission privacy rules and California Consumer data privacy and cyber security laws?
4. Is the cost recovery and request for a two-way balancing account proposed in PG&E's Application just and reasonable?
5. Are the click-through enhancements proposed in SCE's Application just and reasonable?
6. Do the click-through enhancements proposed in SCE's Application comply with Commission Resolution E-4868, Ordering Paragraph 29?
7. Do the click-through enhancements proposed in SCE's Application comply with current Commission privacy rules and California Consumer data privacy and cyber security laws?
8. Is the cost recovery and request to establish a new balancing account/ the "Customer Data Access Balancing

Account" proposed in SCE's Application just and reasonable?

9. Are the click-through enhancements proposed in SDG&E's Application just and reasonable?
10. Do the click-through enhancements proposed in SDG&E's Application comply with Commission Resolution E-4868, Ordering Paragraph 29?
11. Do the click-through enhancements proposed in SDG&E's Application comply with current Commission privacy rules and California Consumer data privacy and cyber security laws?
12. Are there any safety considerations in granting or denying the PG&E, SCE, and SDG&E Applications?

3. Need for Evidentiary Hearing

This Commission preliminarily determined that evidentiary hearings are needed as to all three of the IOUs' Applications. Issues 1, 5, and 9 are contested material issues of fact. Accordingly, evidentiary hearing is needed on these issues.

4. Oral Argument

Parties may request oral argument pursuant to Commission Rule 13.13.

5. Schedule

The current deadline for resolving the issues in these proceedings is May 26, 2021. The parties jointly request to extend the deadline beyond May 26, 2021, and I grant this request. The following amended schedule for the remainder of these consolidated proceedings is adopted here and may be modified by the co-assigned ALJs as required to promote the efficient and fair resolution of the Applications:

Event	Date
Updated Testimony	November 13, 2020
Intervenor Testimony	December 18, 2020
Rebuttal Testimony	January 8, 2021

Discovery Cut-Off	March 12, 2021
Status Conference	April 5, 2021
Evidentiary Hearings [Remote]	April 19, 2021 April 20, 2021 April 21, 2021 April 23, 2021 April 26, 2021
Opening Briefs	May 28, 2021
Reply Briefs	June 18, 2021
Commission Final Decision	To Be Determined

Consolidated proceedings A.18-11-015, A.18-11-016, and A.18-11-017 will stand submitted upon the filing of reply briefs unless the ALJs require further evidence or argument. Based on this amended schedule, these consolidated proceedings will be resolved within 18 months of this First Amended Scoping Memo as required by Public Utilities Code section 1701.5, which is April 22, 2022.

6. Alternative Dispute Resolution Program and Settlements

The Commission's Alternative Dispute Resolution (ADR) program offers mediation and facilitation services and uses ALJs who have been trained as neutrals. At the parties' request, the assigned ALJ can refer these consolidated proceedings to the Commission's ADR Coordinator. Additional ADR information is available on the Commission's website.

Any settlement between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Rules of Practice and Procedure. Such settlements shall include a complete explanation of the settlement and a complete explanation of why it is reasonable in light of the whole record, consistent with the law and in the public interest. The proposing parties bear the burden of proof as to whether the settlement should be adopted by the Commission.

7. Category of Proceeding and *Ex Parte* Restrictions

This ruling confirms the Commission's preliminary determination that consolidated proceedings, A.18-11-015, A.18-11-016, and A.18-11-017, are ratesetting proceedings.⁶ Accordingly, *ex parte* communications are restricted and must be reported pursuant to Article 8 of the Rules.

8. Public Outreach

Pursuant to Pub. Util. Code Section 1711.(a), the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on communities and business that subscribe to it and posted on the Commission's website in the month of January 2019.

9. Intervenor Compensation

Pursuant to Pub. Util. Code Section 1804.(a)(1), any customer who intended to seek an award of compensation must have filed and served a notice of intent to claim compensation by May 27, 2019, thirty (30) days after the initial PHC held.

10. Response to Public Comments

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the "Add Public Comment" button on the "Public Comment" tab of the online docket card for these proceedings.

11. Public Advisor

Any person interested in participating in these proceedings who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at

⁶ Resolution ALJ-3429 (December 13, 2018).

<http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 866-849-8390 or 866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

12. Filing, Service, and Service List

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission's Process office, the service list, and the assigned ALJs. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

These consolidated proceedings will follow the electronic service protocol set forth in Rule 1.10. All parties to these consolidated proceedings shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Rule 1.10. requires service on the ALJ of both an electronic and a paper copy of filed or served documents. When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in these consolidated proceedings may contact the Process Office at process_office@cpuc.ca.gov to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9.(f).

13. Service of Documents on Commissioners and Their Personal Advisors

Rule 1.10. requires only electronic service on any person on the official service list, other than the assigned ALJs.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

14. Assignment of Proceeding

For these consolidated proceedings, Martha Guzman Aceves is the assigned Commissioner and Andrea D. McGary and Jessica T. Hecht are the co-assigned ALJ's and presiding officers.

IT IS RULED that:

1. The presiding officers are Administrative Law Judges Andrea D. McGary and Jessica T. Hecht.
2. The amended scope for these consolidated proceedings, A.18-11-015, A.18-11-016, and A.18-11-017, is described above and is adopted.
3. The amended schedule for these consolidated proceedings, A.18-11-015, A.18-11-016, and A.18-11-017, is described above and is adopted.
4. The statutory deadline for completion of this proceeding is extended until April 22, 2022.
5. The assigned Commissioner and Administrative Law Judges may modify the schedule adopted herein as necessary for the reasonable and efficient conduct of the proceeding.
6. The category of the proceeding is ratesetting.
7. Evidentiary hearing is needed.

This order is effective today.

Dated October 23, 2020 at San Francisco, California.

/s/ MARTHA GUZMAN ACEVES

Martha Guzman Aceves
Assigned Commissioner