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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Concerning Energy Efficiency Rolling Portfolios, Policies, Programs, Evaluation, and Related Issues.	Rulemaking 13-11-005

ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENTS ON THIRD PARTY AND OTHER ISSUES

Summary

This ruling seeks comment from parties on five topics:

1. Potential improvements to the third-party solicitation process;
2. Governance and reform of two of the Commission's energy efficiency database tools:
   - The Cost Effectiveness Tool (CET); and
   - The California Energy Data and Reporting System (CEDARS);
3. Strategic Energy Management (SEM) program issues;
4. The California Analysis Tool for Locational Energy Assessment (CATALENA) project; and
5. Data sharing for Commission-authorized energy efficiency programs.

Some of these topics were also raised in the proceeding evaluating the applications of the program administrators for their 2024-2031 business plans

and 2024-2027 program portfolios (Applications (A.) 22-02-005 et. al.).[1] However, this ruling is seeking input in this rulemaking, in order to have the option of addressing the issues in a decision with an effective date sooner than 2024, which is when any decisions in the application proceedings would become effective. Because these issues are being addressed in the rulemaking proceeding, they need not be addressed in parties' testimony in A.22-02-005 et. al.

This ruling is being served in A.22-02-005 et. al. and A.19-11-003 et. al. (related to the Energy Savings Assistance Program), for transparency to parties in those proceedings who may have interest in some of the topics of this ruling. Comments and replies responsive to this ruling should be filed in R.13-11-005 only. Comments in response to this ruling are invited to be filed and served no later than August 9, 2022. Reply comments may be filed and served no later than August 19, 2022.

1. Third Party Solicitation Process

In January 2018, the Commission adopted Decision (D) 18-01-004, which established a two-stage solicitation approach to soliciting third-party program design and implementation services as part of the energy efficiency portfolio. The Commission also required a set of standard and modifiable contract terms and conditions, established additional steps for the development and approval of third-party contracts, and reserved the right to modify the process in the future.

Since that time, numerous solicitations have been held, the utilities have filed semi-annual reports of feedback from the independent evaluators, Commission staff have hosted semi-annual public stakeholder workshops, an

[1] This ruling will also be served on the service list for A.22-02-005 et. al., but comments should be filed in the rulemaking proceeding only.

independent evaluation has been conducted, and stakeholders have offered a great deal of feedback on the process.

Attachment A to this ruling is a staff proposal that contains a number of proposals for changes and improvements to the third-party solicitation process. This ruling seeks parties' detailed feedback on Attachment A and the questions embedded in the document. For parties' convenience, the questions are also included in Section 1.1 below.

1.1. Questions for Parties

This section excerpts the questions in each section of Attachment A for the convenience of parties responding to this ruling. Refer to Attachment A for a more detailed discussion of each of the issues included in the questions below.

Standard Terms and Conditions

1. What is the burden or impact of requiring upfront payment or collateral to the bidder and implementer?
2. What is the benefit of requiring upfront payment or collateral to the utility or ratepayers?
3. Do parties support striking the final sentence to the "performance assurance; bonding" term?
4. If not, why, and are there amendments to the term and condition that you would support?
5. Do parties support a 3% upper limit to performance assurances required, when justification that a performance assurance is necessary is provided? If not, explain. Please also propose an alternative that would allow greater consistency across utilities and ease ability for small companies with limited cashflow to bid and contract with utilities.
6. Are there legal issues relevant to changing the current rules? Explain.
7. What upfront disclosure of the types of insurance and coverage amounts required for each insurance type should the

investor-owned utilities (IOUs) make during the solicitation process?

8. When in the solicitation process should the IOUs disclose their insurance requirements and why?
9. Should the IOUs be required to justify how the insurance type is relevant to the anticipated scope of work for programs resulting from the solicitation? Why or why not?
10. Do parties support the staff proposal for contracts with insurance requirements tailored to their specific scope of work? Why or why not?
11. Are there insurance types that are especially costly or present other challenges for Implementers to attain? Provide specifics on the challenge that attaining the coverage presents, and any recommendations you propose CPUC consider to mitigate this challenge.
12. In what circumstances is it appropriate for an Implementer to hold professional liability insurance, cybersecurity insurance, employee dishonesty insurance, and/or pollution insurance?
13. Are there specific program scopes of work for which certain types of insurance should not be required?

<u>Modifiable Terms and Conditions</u>

14. Are there changes to the modifiable request for proposal (RFP) instructions for Payment Terms and Table 2 that would improve the number and diversity of businesses bidding for contracts? If so, provide specific changes you propose.
15. Would it be appropriate for an Implementer pay cash or a letter of credit (*i.e.,* a "performance security" to a utility) such that Utility and ratepayers have confidence the Implementer will complete the contracted scope of work and meet performance requirements within? Explain what circumstances might or might not merit such an arrangement.

16. Should all language on performance security be removed? Why or why not?
17. If an IOU does collect against a performance security, should collected funds offset recovery of funds from ratepayers or be added to the program administrator's budget for their energy efficiency portfolio? Why?
18. Would certain payment terms or structures allow for businesses that require early payment to have working capital on hand to implement their programs (*e.g.*, milestone or deliverable based payment arrangements; higher performance payments for early performance milestones)? What are such terms or structures and why would they help bidders?
19. Now that the energy efficiency portfolio is segmented and utilizing the total system benefit (TSB) metric, should the stated preference for pay-for-performance based on verified savings be amended to be based on verified TSB for the Resource Acquisition segment?
20. Should performance payments be tied to a CPUC preferred metric for programs in the Equity and Market Support segments, or should the appropriate performance metric pertinent to the scope of work be left to contracting parties to negotiate?
21. Are there sectors, segments, or program types for which it is inappropriate to use a pay-for-performance structure? Why?
22. What other, if any, changes to General Order 156 require update/amendments to these Energy Efficiency Terms and Conditions or third-party solicitation process?

<u>Other Terms and Conditions</u>

23. Assuming a contractor may not avoid obligations under its contract by the use of subcontracts, is any explicit direction needed on which terms flow down to subcontractors? Are there terms of a contract that do not or should not flow to subcontractors? What is the legal basis for your response?

24. If your response suggests that certain contract provisions do not or should not flow to subcontractors, what direction should be given? Specify in response:

a) Which terms and conditions must flow down to subcontractors and why, including a discussion of applicable law or precedent,

b) If you contend there should be terms and conditions in a contract that should not flow to subcontractors, explain what those terms and conditions are and why flexibility should exist, with discussion of applicable law or precedent, and

c) For the terms and conditions you contend should not automatically be imposed on subcontractors, in what circumstances is it inappropriate or overly burdensome for terms and conditions to flow down to a subcontractor? For example, do all subcontractors have to also hold all insurance IOUs required of the prime Implementer, or do all subcontracts need hold license for the type of work the prime Implementer is responsible to perform? For any such term or condition, explain how your position ensures the contractor is not avoiding its obligations under the contract by using a subcontractor.

25. Should CPUC require IOUs include language in their contracts on which term and condition prevails in the case there is a conflict within the contract terms and conditions between an IOUs added modifiable term and condition and the CPUC decision ordered standard or modifiable term and condition? Why or why not?

26. If so, what language do you propose be added to IOUs contracts with Implementers?

27. Should IOUs ask bidders to provide redlines to terms and conditions in their proposals. If so, why and at what stage (request for abstract, request for proposal, bidder interview, contract negotiation)?

28. Should IOUs be allowed to score bids based on bidders redlines to terms and conditions? Why or why not?

29. What benefits do you see in bidders providing redlines to terms and conditions in their proposals (*e.g.*, does this practice reduce the back-and-forth that will be required during contract negotiation and how is this beneficial to the bidder and/or IOU)?
30. What additional guidance or requirements regarding the timing and process of redlining of terms and conditions by bidders do you propose?
31. Please comment on any exceptions or circumstances when terms and conditions should only apply to a subset of solicitation/contract types. Consider for example, should terms and conditions only apply to:
    a) contracts with companies of a certain size;
    b) contracts for Resource Acquisition programs;
    c) contracts of a certain size budget?
32. To which contracts or solicitations should any changes to terms and conditions or solicitation processes apply? Consider whether changes should apply to:
    a) new contracts only (contracts resulting from solicitations where the RFP hasn't yet released as of date of decision);
    b) existing contracts (should IOUs be required to reenter into negotiation with their Implementer on terms related to the changes made in this decision if the Implementer is able to show significant impact - such as, that the term update would have a >= 5% impact on the cash flow available for the business/contract);
    c) large IOU's Energy Savings Assistance contracts?
33. Are any of your responses to questions in Section 3 also relevant the contract terms and conditions for Local Government Partners adopted in D.19-08-006? If so, which ones?

<u>Solicitation Process</u>

34. Do you support the staff proposal to increase the flexibility of solicitation stages? Why or why not?
35. What should otherwise or additionally be done to amend the current two-stage requirement in D.18-01-004?
36. Is the staff proposal framework and the Tier 1 Advise Letter requirement appropriate for disclosing contract amendments? Does it meet legal requirements for contract approval set forth in applicable CPUC decisions?
37. Do you support, or how would you amend the triggers in staff proposal? Consider, for example, if an Implementer substituting a diverse business enterprise (DBE) subcontractor for a non-DBE subcontractor should be added as a trigger.
38. Would CPUC staff's proposed triggers present an inappropriate burden or delay to program Implementers or program administrators?
39. Would methods to improve transparency of contracts that are amended, such as a report on amendments in the annual report, be sufficient? Why or why not, and for what types of amendments would an alternative method be sufficient?

Bidder Participation

40. What are the risks and benefits resulting from the concentration of energy efficiency contracts with a few, large companies?
41. Should the CPUC establish a cap on the percentage of budget or number of contracts of the overall or IOU-specific (*i.e.*, not including statewide programs) outsourced portfolio that a single contract or single entity can have? If so, how should the cap be established? Are there legal issues that come into play if concentration requirements are adopted?
42. Should the CPUC consider goals for the number of entities the IOU holds contracts with for energy efficiency

third-party programs? If so, how should the goals be established?

43. If yes to either a cap or goals, should having a diversity of sub-contractors factor into the calculation of hitting the cap or goals? If so, how?
44. What other options are there for mitigating risks associated with energy efficiency contract concentration?
45. Should the CPUC or the IOUs further promote the opportunities for DBEs in third party solicitations? How?
46. Are there solicitation opportunities that can be more appropriately structured to attract DBE vendors to submit bids? If so, which type of solicitations would present this opportunity?
47. Are there ways to promote and encourage DBE participation as subcontractors?

Innovation

48. Would it be appropriate for these procurement models to be incorporated into or partially replace the current two-stage solicitations process for programs that count towards the outsourced budget threshold?
49. How would the duties and authority of the procurement review groups (PRGs) and the independent evaluators (IEs) change as a result of utilizing these or other proposed procurement models?
50. For what purpose/uses do stakeholders (specify which stakeholders) find benefit from Implementers and utilities openly sharing data?
51. Should the CPUC require program administrators to gather and release program data from ratepayer funded third-party solicited energy efficiency programs openly in a manner that would not undermine the Implementer's intellectual property (*e.g.*, share the data after a certain amount of time)? If so, which data and at what level of detail? Are there legal requirements the CPUC has adopted that relate to this question?

52. What timelines are appropriate for disclosure of this third-party program data, consistent with law?

53. If non-incumbent bidders do not have access to the same data as incumbents, does this create an uneven playing field? Are there ways to level the playing field by making data accessible to non-incumbents? If so, at what level of detail, via what communication mechanism or platform for sharing information, and when should access to data be provided?

Transparency and Future Market Opportunities

54. Should there be CPUC direction or criteria for third-party contract renewals and what should be the guiding rules? For example, should there be an limit on contract extensions or a CPUC approval process for extensions?

55. Should there be CPUC requirements around the frequency by which new competitive solicitations are held in specific segments or sectors?

56. Is a PRG guideline to IOUs on the timing of feedback to bidders sufficient to ensure bidders receive feedback or should the CPUC require more granular feedback requirements in a decision?

57. If the CPUC should add more requirements, what should they be? Specify what the appropriate level of detail a bidder should receive in feedback sessions (whether voluntarily offered or required) is?

58. Do you agree that CPUC adopting an Energy Efficiency procurement specific confidentiality matrix is a prudent action that simultaneously a) assures transparency on information appropriate for public consumption and b) mitigates burden related to the process of determining, declaring, and challenging confidentiality claims? Are there instances from the past that affect your response; if so, describe them.

59. What additions, deletions, modifications to the confidentiality matrix, as proposed here for energy efficiency, do parties suggest?

60. Should IOUs and Implementers be permitted to make a bilateral agreement to not disclose information? What, if any, legal basis exists that such an agreement could or would take precedent over a CPUC adopted confidentiality matrix to specify when data shall be publicly disclosed?

Other Process Improvements

61. Are there alternatives to intervenor compensation that would allow individual experts to participate and receive compensation for serving on the PRG? What is the legal basis for such alternatives? Would using such alternatives affect others' access to intervenor compensation?

62. Should the definition of financially interested party be amended for purposes of the third-party solicitations process to allow experts that have no real conflict to take part in PRGs or recuse themselves from individual solicitations where a perceived conflict of interest exists? If so, provide specific amendments to the definition? Does such change require any change to statute or the CPUC's rules?

63. Does waning PRG participation negatively impact the solicitations process in a way that is not mitigated by other oversight mechanisms (*e.g.*, IEs and their semi-annual reports)? If so, should more active PRG participation by external parties be encouraged by the IOUs or the CPUC? How?

64. Should the IOUs use a consistent method for accounting third-party administration costs among cost categories? Justify your response.

65. May or should the CPUC delegate establishing consistent accounting methodology for third-party administration costs to staff? Is such delegation lawful?

66. If so, what principles or boundaries should a CPUC decision set for staff to adhere to?

67. If not, what direction at what level of detail should a CPUC decision provide to assure consistent accounting

methodology is used by all IOUs for third party administration costs?

68. After 2022 should workshops with stakeholders continue, and if so, at what frequency?
69. What purpose and scope of workshops would continue to serve value?
70. What are other issues relevant to the third-party solicitations process are critical to address at this time through a CPUC decision?

2. Database Tools

The Commission's Energy Division staff manages a suite of energy efficiency reporting database resources known as CEDARS and the CET. The scope of managing these resources includes funding and managing a contract for database administration and website maintenance, software development, and database and specification updates. Staff coordinates a bimonthly Project Coordination Group (PCG) meeting with the program administrators to discuss reporting updates, determine CEDARS and CET development priorities, and discuss new policy issues that relate to reporting and data management. In their new business plan and portfolio applications (A.22-02-005 et. al.), both Pacific Gas and Electric Company (PG&E) and Marin Clean Energy recommended that the PCG evolve into a governance committee modeled after the California Technical Forum implementation of the California electronic technical reference manual.

The governance committee would be comprised of the program administrators, Commission staff, and other stakeholders on an ad hoc basis, and its main responsibilities would be to jointly support the energy efficiency reporting systems through funding and contracting, determining annual development priorities and system update timelines, and providing a forum for

informal stakeholder input and participation. The governance committee would engage a coordinator to facilitate its meetings, hire and work with software developers, provide project management, and report to governance committee members on progress. PG&E proposed a budget set-aside for these activities from its evaluation, measurement, and verification budget.

In response to this ruling, parties are invited to respond to this concept. In addition, parties are asked to consider and respond to the specific questions in the next section.

2.1. Questions for Parties

71. What are the benefits of creating a governance committee comprised of program administrator and Commission staff to jointly determine the annual development and update priorities for energy efficiency reporting and data system, including CEDARS and CET? How can such a committee make the process transparent to stakeholders?
72. Should all of the program administrators, or only the investor-owned utilities (IOUs), be expected to co-fund the reporting systems (and why)? If the reporting systems are funded by the four IOUs, how can the non-IOU program administrators be appropriately represented in the governance process?
73. The CEDARS database accepts, processes, and stores official energy savings and cost claims upon which the program administrators are assessed for regulatory compliance. How should the Commission maintain data integrity and oversight, while enabling the program administrators to co-fund and co-manage the CEDARS and CET tools?
74. How should the Commission ensure transparency to stakeholders about CEDARS/CET and other resource development and maintenance? What role should

stakeholders play in the software development and update process?

75. What types of reports or notifications, such as an annual CEDARS/CET development plan, would enable stakeholders to clearly understand how resources, such as data specifications and other tools, are changing?

76. What other technical resources would stakeholders like to see from the CEDARS/CET governance committee, if one is created?

3. Strategic Energy Management Program Issues

In D.16-08-019, the Commission identified strategic energy management (SEM) as a long-term "holistic, whole-facility approach that uses normalized metered energy consumption and a dynamic baseline model to determine savings from all program activities at the facility, including capital projects, maintenance and operations and retro-commissioning custom calculated projects." According to D.16-08-019, "the SEM approach leads to capture of additional savings from behavioral, retro-commissioning, and operational activities, as well as identification of bigger opportunities and tracking of projects planned by the customer."

D.16-08-019 also allowed for a net-to-gross ratio (NTGR) of 1.0 to be applied to all projects resulting from statewide industrial SEM programs adhering to a very specific program design that ensures customer participation, education, and tracking of program/project performance. In addition, while there is no specific guidance from the Commission on what effective useful life (EUL) to use for SEM, the implied EUL of 5 years has historically been used based on the Commission-issued Potential and Goals study from 2018 (*see* D.17-09-025).

Due to the program's popularity and the NTGR application, there is stakeholder interest in expanding SEM to other non-industrial market sectors such as commercial, agricultural, and public sector, including local programs. However, prior Commission guidance only allows the program design and related NTGR allowance for statewide industrial SEM programs.

Recently, several program administrators have requested to expand the application of SEM programs. Southern California Edison (SCE), in its opening comments to the proposed decision on summer reliability (which became D.21-12-011), requested clarification from the Commission on whether the SEM program could be expanded to non-industrial sectors. D.21-12-011 made no change to the rules at that time, but encouraged SCE to propose this expanded approach in its portfolio application for a full vetting and discussion. Since that time, several advice letters have been submitted that request SEM expansion.

Due to prior SEM guidance requiring adherence to the statewide industrial SEM guidebooks to apply the NTGR of 1.0, Commission staff provided guidance that the industrial sector guidebooks be emulated for consideration of SEM program expansion into non-industrial sectors seeking to apply the related NTGR and EUL. The existing guidebooks were written to be rigorous in terms of required industrial customer participation and program tracking to justify the NTGR of 1.0. Because these guidebooks were developed specifically for the industrial sector, they may not be exactly relevant for other sectors. As the SEM guidebooks are considered living documents, the SEM statewide program administrators have revised the previous Statewide Industrial SEM Guidebooks. These revised guidebooks are posted at the following links:

https://pda.energydataweb.com/#!/documents/2647/view
https://pda.energydataweb.com/#!/documents/2648/view

In order to allow SEM expansion into other non-industrial sectors, the Commission needs to issue additional policy guidance as soon as possible.

3.1. Questions for Parties

This ruling asks parties to review the revised SEM guidebooks and respond to the following questions:

77. Could the industrial SEM program design and related guidebooks be applicable to non-industrial sectors? If yes, why? If not, why not and how could they be revised to be more applicable to non-industrial sectors?
78. Currently the industrial SEM program is designed as a long-term customer participation program following a prescriptive program design comprised of two 2-year cycles and eventually up to three 2-year cycles. Customers may elect to participate in some or all cycles. If a less rigorous approach is more appropriate for certain non-industrial sectors (*e.g.*, shorter cycles, fewer activities, etc.), when compared to the more rigorous industrial SEM program design, is there a rationale that the NTGR of 1.0 and/or longer EUL are still applicable? Why or why not?
79. If a less rigorous approach is applied to non-industrial sectors for SEM, should these programs be called something else, to avoid stakeholder confusion? Explain your rationale and suggest alternative names, if applicable.
80. Currently the official SEM guidebooks are maintained by the statewide SEM program administrators as living documents able to be revised in real time, as needed. Should this process continue, or should a different process be used to revise/update the SEM guidebooks? Or if the current process should be continued, are there any additional steps that should be incorporated? Explain your rationale.

81. The primary objective of the Potential and Goals Study[2], updated every two years, is to adopt energy efficiency goals for the program administrators, not to formally adopt energy savings calculation parameters such as EUL metrics. In addition, the studies only reference SEM EULs for commercial, industrial, and agricultural sectors. Are these EULs appropriate for commercial, industrial, and agricultural SEM programs that meet the Commission's threshold for SEM program design? Are they also appropriate for other sectors? Why or why not? Alternatively, should the Commission direct its staff to conduct California-specific SEM EUL studies? Are there different studies that are more appropriate for determining EUL metrics for SEM? Explain your rationale.

4. CATALENA Project

D.18-05-041, which authorized the 2018-2025 energy efficiency business plans, directed the IOUs to select a statewide lead to oversee development of a statewide energy use database by a third-party implementer[3]. Specifically, Ordering Paragraph 32 of D.18-05-041 states:

> As part of their local government and public sector implementation plans, the utility program administrators shall select among themselves a lead to oversee statewide deployment of the Energy Atlas and competitively solicit a third party to implement the deployment, maintain data quality, consistency and security, continue development of the Energy Atlas' capabilities, and encourage and support local governments that choose to participate. Commission staff is authorized to oversee the procurement process and implementation of the Energy Atlas statewide deployment and ongoing management. The utility program administrators shall allocate up to $2 million to expand the Energy Atlas, and include annual Energy Atlas management

[2] The most recent study is available at the following link: https://pda.energydataweb.com/#!/documents/2531/view

[3] *See* D.18-05-041 at 150.

and maintenance costs in their annual budget advice letters proportionally according to relevant energy efficiency program budgets.

The Energy Atlas referred to in D.18-05-041 is a specific database tool developed by the University of California, Los Angeles (UCLA) for most counties in Southern California. The Energy Atlas consists of two databases, one being a public interface with aggregated, privacy-protected data tables, which is made possible by the other, confidential, geospatial relational database that is accessible (in disaggregated form) only to qualifying researchers under binding non-disclosure agreements.[4] The data contained in the geospatial relational database includes disaggregated demand data, as defined in the California Energy Commission's Title 20, which constitutes "covered information" as defined by D.15-06-016.[5]

SCE was selected as the statewide lead for expanding the Energy Atlas to statewide use. This expanded tool is referred to as CATALENA. D.18-05-041 is clear that the Commission's intent for the CATALENA tool is to expand the Energy Atlas to statewide use, including both the public-facing database and the back-end geospatial relational database, and making disaggregated demand data accessible to qualifying users.

4.1. Questions for Parties

82. How should the IOUs be required to implement the disaggregated demand data as defined in California Code of Regulation. Title 20, § 1353 - Disaggregated Demand

[4] *See* "Data Overview" at the following link: https://www.energyatlas.ucla.edu/methods

[5] California Code of Regulations Title 20, section 1353, accessible at https://govt.westlaw.com/calregs/Document/IC4F7B34207E64741B67D72B9725B221A?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)

Data, in the statewide tool ordered in Ordering Paragraph 32 of D.18-05-041?

83. Describe how the winning bidder of the statewide tool should make disaggregated demand data accessible to qualifying users and use cases as defined in D.14-05-016?
84. Explain if and how the statewide tool should adapt to data needs from other proceedings such as those addressing building decarbonization, demand response, and integrated distributed energy resources, to avoid duplication of efforts?
85. What additional clarifications are needed to ensure that the statewide Energy Atlas-like tool will be most useful to California energy policy development for the long term?
86. Is a long-term funding commitment needed, and if so, provide detailed suggestions for how much and how it should continue to be funded.

5. Data Sharing for Commission-Authorized Energy Efficiency Programs

On June 3, 2022, the Tri-County Regional Energy Network (3C-REN) filed a motion requesting that the Commission direct the IOUs in 3C-REN's geographic area - PG&E, SCE, and Southern California Gas Company (SoCalGas) - to provide certain program participant and non-participant data to 3C-REN and/or its program implementer(s) so that 3C-REN can operate its population normalized meter energy consumption (NMEC) residential single-family program.[6]

On or before June 20, 2022, the following parties filed responses to the 3C-REN motion: California Efficiency and Demand Management Council (CEDMC); PG&E; Bay Area Regional Energy Network, Inland Regional Energy

[6] The program, known as the Single-Family Home program, was approved on January 3, 2022 with the approval of 3C-REN's advice letters 8-E/7-G and 8-E-A/7-G-A.

Network (I-REN), the Local Government Sustainability Energy Coalition, Marin Clean Energy, and Rural Regional Energy Network (the Joint Parties); Recurve Analytics (Recurve); SCE jointly with SoCalGas (the Joint Utilities); and Southern California Regional Energy Network. All parties except the Joint Utilities and PG&E supported granting 3C-REN's motion. CEDMC, the Joint Parties, and Recurve argued that this data should already be provided to any Community Choice Aggregator or REN. CEDMC added that this motion should apply more broadly to all RENs. The Joint Utilities and PG&E opposed granting the motion's request but differed on what they believe is required for the IOUs to share the requested data with 3C-REN.

On June 21, 2022, the Joint Utilities requested permission to file a reply to PG&E's response, because the Joint Utilities disagreed with a point in PG&E's response. On June 22, 2022, Administrative Law Judge (ALJ) Kao issued an e-mail ruling directing the utilities and inviting all other parties to file a response to the following question:

> PG&E's June 17, 2022 response states "while PG&E agrees with the other IOUs that an order by the Commission to share the data would suffice to establish primary purpose, PG&E is also willing to negotiate an updated program contract, similar to PG&E's contract with the Bay Area Regional Energy Network." SoCalGas and SCE's June 20, 2022 joint response states they "do not agree with the interpretation that a contract absent Commission authorization can establish a primary purpose." Explain whether and why you agree, or disagree, that a contract that allows for the sharing of confidential customer information is sufficient to enable the investor-owned utilities to share confidential customer data with 3C-REN, without requiring 3C-REN to acquire prior consent from individual customers for the data sharing.

On June 30, 2022, 3C-REN filed a reply and on July 1, 2022, CEDMC, PG&E, the Joint Utilities, and Recurve all filed responses to the ALJ's June 22, 2022, e-mail ruling.

In its reply, 3C-REN makes several points. First, 3C-REN states that REN energy efficiency programs are a primary purpose, that both participant and non-participant data is necessary to implement NMEC programs, and that streamlined data access is essential to run effective energy efficiency programs. Second, they address the Joint Utilities' response, stating that as a government entity they are already authorized by the Commission to receive the requested data according to D.11-07-056. Next, they state that the cost-sharing agreement with the IOUs for the sharing of this data should be addressed in A.22-02-005 et. al.

In their reply to PG&E's response, 3C-REN states concerns with the approach suggested, that PG&E and 3C-REN could update their contract to provide the requested data. 3C-REN notes that they have pursued this approach for months with the IOUs and that the negotiations have not been fruitful. They add that if the Commission seeks to pursue the contractual approach, 3C-REN respectfully requests that they work with Commission staff—not the three IOUs, who do not share consistent views—to arrive at a reasonable approach to data minimization and protection that will allow 3C-REN's NMEC program to operate.

In reply, PG&E reiterated that they believe they have sufficient authorization to negotiate an updated program agreement with 3C-REN, with the understanding that such a contract would create primary purpose—thus, allowing for the sharing of confidential customer data under privacy rules and laws.

The Joint Utilities disagree with PG&E that a data-sharing agreement could be a solution to share the requested data with 3C-REN and state that only the Commission could direct them to share the data requested by 3C-REN's motion. Recurve suggests that Commission direction is not necessary for the IOUs to share the requested data with 3C-REN, but suggests that Commission direction would provide clarity. CEDMC agrees with Recurve and added that the data that was requested in the 3C-REN motion should be provided to non-IOUs and recommends that this requirement be extended to implementers as well.

Parties should respond to the questions below and are encouraged to provide any additional information related to the 3C-REN motion and data access in energy efficiency programs, which may be beneficial to the Commission.

5.1. Questions for Parties

87. Should IOUs be ordered to provide disaggregated consumption data to 3C-REN and other RENs, upon their request, for the purposes of REN energy efficiency program operations and measurement and verification activities? If so, please specify:
    a. The specific data that IOUs should be required to share
    b. Frequency of data sharing
    c. Which entity should incur associated operational costs
    d. Compliance requirements, conditions, and other considerations.
88. Should IOUs be ordered to provide disaggregated consumption data to implementers (including third-party implementers) who are contracted to deliver Commission-authorized energy efficiency programs in their territory, for the purposes of energy efficiency program operations

and measurement and verification activities? If so, please specify:

a. The specific data that IOUs should be required to share

b. Frequency of data sharing

c. Compliance requirements, conditions and other considerations.

89. Provide any additional information related to the 3C-REN motion and data access in energy efficiency programs which you believe may be beneficial to the Commission.

IT IS RULED that:

1. Parties may file and serve comments in response to this ruling, including Attachment A and the questions in Sections 1.1, 2.1, 3.1, 4.1, and 5.1, by no later than August 9, 2022.

2. Parties may file and serve reply comments in response to this ruling by no later than August 19, 2022.

Dated July 15, 2022, at San Francisco, California.

/s/ JULIE A. FITCH
Julie A. Fitch
Administrative Law Judge

/s/ VALERIE U. KAO
Valerie U. Kao
Administrative Law Judge

Attachment A