BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the Self-Generation Incentive Program and Related Issues.	R.20-05-012

SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) PETITION FOR MODIFICATION OF D.22-04-036

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Dated: **July 18, 2022**

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I.

INTRODUCTION AND SUMMARY OF REQUESTED MODIFICATION

Pursuant to Rule 16.4 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, Southern California Edison Company (SCE) timely files this Petition for Modification (PFM) of Decision (D.) 22-04-036, Decision Establishing Heat Pump Water Heater Program Requirements (the Decision), requesting to modify the order that requires SCE to transfer the entire budget of $84.7 million dollars to the third-party program administrator[1] of Self Generation Incentive Program (SGIP) Heat Pump Water Heater (HPWH) in the first program year.[2] Ordering Paragraph (OP) 5(g) was materially modified from the proposed decision, and the modification received no public review or commentary prior to the Commission's approval, which likely would have revealed the infirmity of the order. This late-addition order introduces significant, unnecessary risk in the Commission's oversight of the HPWH program by requiring SCE to transfer a substantial sum of money held in trust for the benefit of investor-owned utility (IOU) electric and gas customers to a third party over whom the Commission has no regulatory jurisdiction. The order requires this even though there is no relationship between the timing of the transfer of funds and the work performed by the PA/PI, which is not prudent or commercially reasonable. There is no reason for the Commission to order the transfer

[1] Per the Decision, the third party program administrator (PA) is also the program implementer (PI) (thus, referred to as the "PA/PI").

[2] *See* Decision, OP 5(g), directing SCE to "[t]ransfer funds received in the SGIP HPWH balancing account (or subaccount) not needed for SCE's contracting expenses to the SGIP HPWH PA/PI within 30 days of execution of SCE's contract with the PA/PI, or within 30 days of receipt of the funds, whichever occurs last"; this order requires SCE to transfer $74.7 million dollars to the third-party PA/PI in 2023, and the remaining $10 million at the end of January 2024.

of all three years of the HPWH funding outside the Commission's regulatory reach, years in advance of any need to spend that amount of money to implement the program and pay incentives.

SCE knows of no comparable directive in any existing public purpose program, whether administered by an IOU or a third party, and SCE would not, absent the order, contract for payment terms that required it to pay a vendor substantial sums years prior to the work being performed. While there are numerous reasons it is imprudent to pre-pay the entire contract amount, some key risks are that the unregulated third-party could (i) experience financial distress or bankruptcy while in possession of considerable unused customer funds that could potentially be used to pay other debts of the PA/PI; (ii) fail to perform material contract terms, and, given SCE's role as contract holder, litigation to claw back funds could be time-consuming, costly and difficult; (iii) engage in fraud or malfeasance with no regulatory remedy, but mere contract damages, available to SCE or the Commission. Given these risks, if OP 5(g) remains unchanged, SCE submits that neither the Commission nor SCE will be able to adequately "[s]afeguard the SGIP HPWH funds, disburse funds only for authorized program activities as described here, and provide an audited accounting of the funds . . ." as required by the Decision's OP 5(i).

To better ensure that the HPWH program funds will be spent in the public interest, as required by law, the Decision should be modified, at a minimum, to replace the existing OP 5(g) with a directive that SCE transfer monies to the third party PA/PI quarterly, based on (i) quarterly budgets submitted by the third party and approved by the Energy Division, and (ii) actual, reasonable expenditures supported by quarterly reporting with documentation to the Energy Division. The initial transfer should be an amount reasonably required by the third-party PA/PI, as determined by the Energy Division, to operate during the first quarter of the program implementation year. The modification should require adequate, ongoing supporting documentation from the PA/PI, including an attestation, to demonstrate that it has used the disbursed funds only for authorized program activities.

These issues are discussed in more detail below. A supporting declaration is provided in Appendix A.

II. DISCUSSION

A. The Decision's Program Administration Structure Creates Legal Risks

While SCE would be concerned with an order to transfer all HPWH program funds to an unregulated third party in any circumstance, SCE's concern is exacerbated by the program administration structure established by the Decision.

The Decision explains that Public Utilities Code Section 379.6[3] established the Self-Generation Incentive Program in 2001 and imposes numerous obligations on the Commission, including "to ensure an equitable distribution of the costs and benefits of the program" and the "repayment of all unallocated funds collected pursuant to this section to reduce ratepayer costs."[4] The Decision states that questions regarding the proper administration of the HPWH program are within its scope.[5] However, the Decision offers no analysis supporting its conclusion that use of a third party "vendor" as both the program administrator and program implementer is appropriate,[6] or why the desire for a single, statewide program administrator should not be fulfilled by an IOU over whom the Commission has broad regulatory authority, with that IOU PA administering and managing the contract with a statewide, third party program implementer. SCE advocated that a third party should not serve in both the program administrator and implementer role, and SCE proposed to serve as the PA for the HPWH program, but the Decision relegates SCE to a "contract holder." Although SCE's role remains somewhat ambiguous in the Decision, the role of "contract holder" appears designed mainly to facilitate the Energy Division's selection of the third-party vendor and effectuate the transfer of $84.7 million dollars to that vendor. The Decision concludes, summarily, that using a third-party vendor to serve as both the program

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[3] All references to code sections herein are to the Public Utilities Code unless otherwise stated.

[4] *See* Decision, p. 8, describing the various requirements to be met under the Commission's jurisdictional oversight.

[5] *See* Decision, p. 6, including Should the Commission consider the requirements for an IOU or other entity to act as PA for HPWH incentives? What would preclude an IOU or entity from acting as the PA? Should any IOU be precluded from acting as PA for HPWH technologies? If an incumbent IOU is not designated as a PA, what alternative should be adopted?

[6] *See* Decision, Section 10.3. It is unusual and risky for an unregulated third party to serve as a program implementer, as well as its own program administrator. In fact, the Commission has moved away from having the IOUs serve in both the program administrator and program implementer roles.

administrator and implementer – rather than having an IOU perform the program administration function, subject to the Commission's regulatory oversight – would provide "streamlining and coordination values" that "outweigh the benefit of" other forms of administration involving the regulated IOUs.[7]

Unfortunately, the Decision fails to consider key legal and jurisdictional issues associated with public purpose program administration. First, the Commission must retain jurisdiction to ensure that the HPWH funds are properly spent. This is part of the Commission's overriding duty to ensure that a program established by the Legislature to advance a public good is carried out in the public interest. This is specifically confirmed by Section 379.6, which requires that the Commission actively oversee the SGIP program to achieve the numerous legislative objectives delineated in that statute, and by California Code of Regulations (CCR) Section 95893, which requires the Commission, among other things, to ensure that allowance value is "used for the primary benefit of retail natural gas ratepayers and may not be used for the benefit of entities or persons other than such ratepayers."[8] It is unclear how the Commission can fulfill this duty with an unregulated third-party vendor serving as both program administrator and program implementer, and also holding ***all*** program funds for the majority of the contract term.

Second, the use of a non-regulated third-party vendor to serve as program administrator divests the Commission of regulatory jurisdiction over the program administration because the Commission lacks the jurisdiction to regulate non-IOU program administrators. The Commission's regulatory jurisdiction is limited to the IOUs, unless expressly extended by legislation. No law authorizes the Commission to regulate a non-IOU program administrator for HPWH. Instead, the Decision contemplates that the Commission will attempt to oversee the program administration by contract – in this case, through a contract between SCE and the third-party vendor, whereby the Commission is not a party to the contract, and SCE's role is relegated to "contract holder" with no clear rights for program

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[7] *See* Decision, p. 81.

[8] *See* CCR Sections 95893(d)(2), (d)(3) through (d)(8) and 95893(e).

administration. The Commission's lack of regulatory jurisdiction over a third-party program administrator provides yet another reason that it would be extremely risky to transfer all $84.7 million in program funding to the PA/PI in the first year of the program launch.

A contract is insufficient to ensure that the Commission can fulfill its statutory responsibilities with respect to public purpose programs. A contract does not give the Commission the latitude it requires to regulate, to ensure that it has the full range of tools necessary to protect the public's interest and the disposition of money in the face of unforeseen circumstances. The California Court of Appeal has definitively rejected a contract theory of regulation. In *Pacific Gas and Electric Corp. v. Public Utilities Commission*, in response to the argument that an IOU holding company's acceptance of conditions imposed on its formation created a contract that the Commission could enforce, the Court observed that the relevant statutes gave "no indication that the Legislature intended the Commission to enter into any type of contract as a means to fulfill its mandate to protect the interests of ratepayers."[9] The Court went on to say that Section 1759 bars a contract approach to regulation: "[r]equiring the Commission to bring a breach of contract action to enforce the conditions would enmesh the Superior Court in the Commission's performance of its duties" was held to violate Section 1759, as the Court concluded that "a Superior Court action treating the Commission's orders as contracts would clearly interfere with the Commission's regulatory duties."[10]

Fundamentally, the Commission lacks sufficient control over non-regulated third party program administrators to carry out its statutory duty to ensure that public purpose program funds are properly spent. Absent legislative authority to transfer public purpose program funding to a third party and regulate that third party's use of the funding, the Commission has long typically – and appropriately – discharged its duty to ensure that public purpose program monies are used in the public interest by directing one or more IOUs to serve as program administrators and exercising the Commission's broad

9 *See Pacific Gas and Electric Corp. v. Public Utilities Commission*, 118 Cal.App.4th 1174, 1208 (2004).

10 *See id.*, at 1211, 1212.

regulatory oversight of the IOUs in that capacity, even when a single, third party statewide program implementer is desired.

The Commission has comprehensive regulatory power over the IOUs' decisions respecting program administration. This follows not only from the Commission's general authority under 701, but also more specifically from Section 379.6, in which the Commission is directed to oversee and direct the IOUs' spending of the SGIP funds, and from the CCR Section 95893, which imposes specific limitations on the use of gas Cap-and-Trade allowance proceed funds. The Commission lacks the tools to ensure that non-IOU program administrators make decisions involving $84.7 million of public purpose program funding in a way that meets the public interest and that advances the legislative goals in Section 379.6 and CCR Section 95893. The Commission will have limited recourse in the event that the HPWH program does not deliver the requisite legislative or regulatory objectives, fails to comply with the Decision, or the third-party program administrator fails to perform in other ways.

The Commission in D.05-01-055, after gathering an exhaustive legal and policy record, rejected public purpose program oversight through a contract as "potentially weaker, more complex, and less flexible than relying on our regulatory powers."[11] The lessons learned in this 2005 decision are still relevant, with programs like HPWH, Solar on Multifamily Affordable Housing (SOMAH), TECH Initiative and others mentioned in the Decision[12] that do not even rely on a contract between the

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[11] *See* D.05-01-055, rejecting program oversight through a contract based on an extensive legal and policy record, concluding: "we would have significant concerns about the degree of control we could exert over third parties under an independent administrative structure. The Commission has broad regulatory authority to ensure and enforce the IOUs' compliance with our policy rules and requirements based on current statute and Constitutional authority. In contrast, the proposals for independent administrators in this proceeding rely on contractual authority. This form of authority is potentially weaker, more complex, and less flexible than relying on our regulatory powers. In particular, we would have limited recourse in the event that the programs do not deliver the requisite energy savings or the program administrator fails to perform in other ways. . . . [T]he remedies for breach of contract are much more limited than our regulatory authority under current law. . . . While the Commission can and does exercise control of contractors by defining the terms and scope of work, entities that sign contracts with the Commission do not by that fact alone become subject to the Commission's regulatory jurisdiction. In fact, . . . the only expedient remedy for unsatisfactory performance is the termination of the program administrator's contract. Any other remedy could require us to litigate the matter in Superior Court, which is time consuming, expensive and uncertain, and less satisfactory than direct regulation."

[12] *See* Decision, p. 81.

Commission and the third party program administrator, but rather rely on a contract to which the Commission is not a party, and where the IOU has little to no program administration authority by design. This oversight structure is potentially even weaker and riskier than the one contemplated and rejected in D.05-01-055.

With the HPWH program, SCE's limited role is described mainly as follows:

> *PA Contract Holder: The Commission directs SCE to issue a Request for Proposal (RFP) for a competitive bidding process to select a statewide SGIP HPWH PA/PI and contract with the winning entity. SCE would then be responsible for providing ongoing fiscal support through the collection, disbursal, and monitoring of SGIP HPWH funds.*[13]

Because the Decision orders SCE to transfer funds to the third-party vendor "within 30 days of execution of the contract, or within 30 days of receipt of the funds, whichever occurs last," SCE's ability to provide "ongoing fiscal support through the collection, disbursal and monitoring" of HPWH funds is extremely limited. Moreover, SCE is concerned with the potential conflict between the late-added OP 5(g), and OP 5(i), which requires SCE, as contract holder, to "[s]afeguard the SGIP HPWH funds, disburse funds only for authorized program activities as described here, and provide an audited accounting of the funds[.]" Other than transferring the program funds to the PA/PI through an escrow or trust account, which SCE intends to propose as part of the PA/PI contract, SCE will not be able to both transfer all $84.7 million in funding with no program administration role ***and*** adequately safeguard and disburse the funds only for program activities. The Decision's delineation of SCE's role is somewhat ambiguous: the Decision appears to give SCE no program administration oversight of the third-party vendor, while requiring SCE to transfer the funding in one lump sum and ordering SCE to provide "fiscal support" and "monitoring" and to "administer the contract," without the express authority of a

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[13] *See* Decision, p. 76. The Decision at p. 109 states that the final decision "modifies and clarifies requirements pertaining to SCE's role" in response to "comments from SCE about our adopted statewide SGIP HPWH PA/PI structure," but SCE finds no substantive changes in SCE's role in the final decision. If anything, SCE's role is diminished in the final Decision, because the Proposed Decision's OP 5(g) initially provided an oversight role, whereas OP 5 (g) in the final Decision replaces that explicit oversight role with a requirement that SCE transfer all funds to the PA/PI within 30 days of contract execution or receipt of funds because this limits SCE's ability to serve even as a fiscal agent of the funds.

program administrator.[14] SCE's limited role by design, combined with the Commission's lack of regulatory authority over the program funds once they are transferred to the third party program administrator, introduces significant, unnecessary risks into the HPWH program. These risks should be addressed so that the Commission can ensure the HPWH program is carried out in the public interest.

B. At a Minimum, the Decision Must Adopt More Prudent Funding Requirements

For reasons discussed above, absent a fundamental shift in the structure of the program administration, the Commission will have insufficient authority, tools and recourse to ensure that a third-party program administrator make decisions involving $84.7 million of public purpose program funding in a way that meets the public interest and that advances the legislative goals in Section 379.6 and CCR Section 95893.

At a minimum, the Decision should be modified to replace the existing OP 5(g) with a more prudent funding transfer order. The existing OP 5(g) directs:

> Transfer funds received in the SGIP HPWH balancing account (or subaccount) not needed for SCE's contracting expenses to the SGIP HPWH PA/PI within 30 days of execution of SCE's contract with the PA/PI, or within 30 days of receipt of the funds, whichever occurs last;

Pursuant to the order, SCE must disburse to the third-party PA/PI all $44.7 million of IOU customer funding within 30 days of contract execution[15] and $10 million of gas Cap-and-Trade funds within 30 days after the end of each quarter in 2023, which results in a transfer of the entire $84.7 million just after the end of 2023. Disbursing the funds in this manner is imprudent because the transfer amounts bear no relationship to when the PA/PI actually requires the funds for program activities. There is no reason why the Commission should order the transfer of all $84.7 million of HPWH monies outside its regulatory authority, to an unregulated third party, as required in OP 5(g). The Decision's stated goal of ensuring that "monies are continuously available to the PA/PI to pay incentives to

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[14] *See, e.g.,* Decision, p. 3 ("The PA/PI shall be solely selected and managed by Commission Staff"); p. 135, OP 5(h) (SCE shall "[e]xecute the SGIP HPWH PA/PI contract, administer the contract, and pay the PA/PI".).

[15] Decision, OP 6 (requiring the IOUs to give SCE their respective funding shares within 60 days of the effective date of SCE's advice letter establishing the SGIP HPWH balancing account). Given this order, the SGIP funds will already be in the balancing account upon the effective date of the PA/PI contract and will therefore be due for transfer within 30 days of execution of the contract.

customers in a timely fashion"[16] does not warrant the transfer of all $84.7 million to the third-party program administrator in the first program year, not from an operational perspective and certainly not from a risk perspective.

SCE knows of no comparable requirement in any existing public purpose program, whether administered by an IOU or a third party. Rather, existing programs have more prudent, regular funding transfer mechanisms based on reasonable, forecasted expenditure needs of the program administrator and actual, reasonable expenditures incurred. For example, some contracts using a similar IOU "contract holder" structure require the third-party vendor to submit monthly invoices, documenting costs actually incurred and work performed, which are approved by the Energy Division before the IOU disburses program funds.[17] Funding for at least one non-IOU third-party statewide program administrator is "contingent upon Commission approval of a Tier II Annual Budget Advice Letter submitted by the lead IOU on behalf of the [PA]" and such funding includes significantly more oversight than proposed here.[18] The Decision's OP 5(g) goes far beyond how other programs with similar contracting structures are funded and far beyond the Center for Sustainability's (CSE's) request for pre-payment of incentive funding.[19] Although SCE deems invoice-based payments for work already performed or incentives already committed or paid to be more commercially reasonable, SCE's proposed modifications would allow for pre-payment of incentive funding on a reasonable, as-needed basis.

Accordingly, the existing OP 5(g) should be modified to direct SCE to transfer monies to the third party administrator quarterly, based on (i) quarterly budgets submitted by the third party

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16 Decision, p. 109.

17 While the specific terms of these contracts are confidential, Commission staff reviewed and have copies of these contracts, and SCE can provide further detail on a confidential basis, if required.

18 *See* D.19-12-021, p. 125. The Market Transformation Administrator's (MTA) work is also overseen by the appointed members of a Market Transformation Advisory Board, and there are several other safeguards to ensure funds are disbursed as needed.

19 *See* Decision, p. 109, stating "in response to comments from CSE, the final decision requires an upfront incentive funds transfer process from SCE to the SGIP HPWH PA/PI to ensure that monies are continuously available to the PA/PI to pay incentives to customers in a timely fashion."

administrator and approved by the Energy Division, and (ii) actual, reasonable expenditures incurred as supported by quarterly reporting with documentation to the Energy Division. The initial transfer should be an amount reasonably required by the third party administrator, as determined by the Energy Division, to operate during the first quarter of the program implementation year. The Energy Division has the authority to adjust the funding amounts as the program is being administered, based on actual expenditures and observed trends in incentives payments. Additionally, OP5(g) should include a requirement that the PA/PI adequately demonstrate that it spent all disbursed funds on authorized program activities to enable SCE to comply with OP 5(i).

Specifically, the Decision should be modified as follows (in **bold underline** and ~~strikethrough~~):

> 5.g. Transfer funds received in the SGIP HPWH balancing account (or subaccount) not needed for SCE's contracting expenses to the SGIP HPWH PA/PI **on a quarterly basis** within ~~30 days of execution of SCE's contract with the PA/PI, or within 30 days of receipt of the funds, whichever occurs last~~ **10 business days of the Energy Division's approval of the SGIP HPWH PA/PI budget for such upcoming quarter, which budget should reasonably forecast the PA/PI's expenditures during the upcoming quarter and account for actual, reasonable expenditures incurred to date and any existing unspent, unallocated funding in the PA/PI's possession and require the PA/PI to demonstrate to the satisfaction of the Energy Division and SCE, through adequate supporting documentation including an attestation under penalty of perjury by an officer, that it has spent program funding only on authorized program activities**;

III. CONCLUSION

SCE appreciates the Commission's timely consideration of this PFM.

Respectfully submitted,

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/s/ Janet S. Combs

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Dated: July 18, 2022

Appendix A

DECLARATION OF MICHELLE THOMAS

1. I, Michelle Thomas, am a Principal Manager in Customer Programs & Services at Southern California Edison Company ("SCE"). I have managed various public purpose programs for SCE for more than 20 years. Pursuant to Rule 16.4(b) of the California Public Utilities Commission Rules of Practice and Procedure, I submit this declaration in support of the Petition for Modification of Decision ("D.") 22-04-036 filed by SCE.

2. Decision (D.) 22-04-036, Decision Establishing Heat Pump Water Heater Program Requirements (the Decision), created the Heat Pump Water Heater (HPWH) program and authorized a total of $84.7 million in funding through 2025.

3. The funding includes Self-Incentive Generation Program (SGIP) program funds totaling $44.7 million and $40 million of gas Cap-and-Trade funds.

4. The Decision declines to direct an IOU to serve as program administrator and instead directs SCE to run a competitive solicitation for a third party to serve as a statewide program administrator and program implementer ("PA/PI") under a contract with SCE.

5. The Decision, in Ordering Paragraph (OP) 5(g) requires SCE to "[t]ransfer funds received in the SGIP HPWH balancing account (or subaccount) not needed for SCE's contracting expenses to the SGIP HPWH PA/PI within 30 days of execution of SCE's contract with the PA/PI, or within 30 days of receipt of the funds, whichever occurs last."

6. Effectively, OP 5(g) requires SCE to transfer almost all the $84.7 million in program funding to the third party PA/PI in 2023, with the last payment of $10 million in 30 days after the end of 2023.

7. OP 5(g) was materially modified from the proposed decision, and so the modification received no public review or commentary prior to the Commission's approval.

8. This late-addition OP 5(g) introduces significant, unnecessary risk in the Commission's oversight of the HPWH program.

9. The Commission does not have the authority to regulate a third party PA/PI to ensure that the HPWH funds are properly spent on program activities that serve the public interest.

10. The Decision adopts a program structure that relies on a contract with the PA/PI, and not on the Commission's regulatory authority, to try to ensure that the HPWH funds are spent in the public interest.

11. SCE is concerned that a contract is insufficient to ensure that the Commission can fulfill its statutory duty to ensure that the SGIP and gas Cap-and-Trade monies are spent in the public interest.

12. Section 379.6 requires that the Commission actively oversee the SGIP program to achieve the numerous legislative objectives delineated in that statute. California Code of Regulations (CCR) Section 95893 requires the Commission, among other things, to ensure that allowance value is "used for the primary benefit of retail natural gas ratepayers . . . and may not be used for the benefit of entities or persons other than such ratepayers."

13. A contract that transfers all $84.7 million of funding to an unregulated, third party vendor would involve significant, unnecessary risk in the Commission's oversight of the HPWH program. There is no relationship between the timing of the transfer of funds as ordered in OP 5(g) and the work to performed by the PA/PI, which is not prudent or commercially reasonable.

14. Key risks are that the unregulated third party could (i) experience financial distress or bankruptcy while in possession of considerable unused customer funds that could potentially be used to pay other debts of the PA/PI; (ii) fail to perform material contract terms, and, given SCE's role as contract holder, litigation to claw back funds could be time-consuming, costly and difficult; (iii) engage in fraud or malfeasance with no regulatory remedy, but mere contract damages, available to SCE or the Commission.

15. There is no reason for the Commission to order the transfer of all three years of HPWH funds outside the Commission's regulatory reach, years in advance of any need to spend that amount of money to implement the program and pay incentives as required in OP 5(g).

16. I know of no comparable directive in any existing public purpose program, whether administered by an IOU or a third party.

17. SCE would not, absent the order, contract for payment terms that required it to pay a vendor substantial sums considerably prior to the work being performed.

18. The Decision's stated goal of ensuring that "monies are continuously available to the PA/PI to pay incentives to customers in a timely fashion" does not warrant the transfer of all $84.7 million to the third-party program administrator in the first program year, not from an operational or risk perspective.

19. The Decision's OP 5(g) goes far beyond how other programs with similar contracting structures are funded.

20. Some contracts using a similar IOU "contract holder" structure require the third-party vendor to submit monthly invoices, documenting costs actually incurred and work performed, which are approved by the Energy Division before the IOU disburses funds.

21. Funding for at least one non-IOU third-party statewide program administrator is "contingent upon Commission approval of a Tier II Annual Budget Advice Letter submitted by the lead IOU on behalf of the [PA]" and such funding includes significantly more oversight than proposed in the Decision.

22. If OP 5(g) remains unchanged, SCE is concerned that neither the Commission nor SCE will be able to "[s]afeguard the SGIP HPWH funds, disburse funds only for authorized program activities as described here, and provide an audited accounting of the funds . . ." as required by the Decision's OP 5(i).

23. To better ensure that the HPWH monies will be spent in the public interest, as required by law, the Decision should be modified, at a minimum, to replace the existing OP 5(g) with a directive that SCE transfer monies to the third party PA/PI quarterly, based on (i) quarterly budgets submitted by the third party and approved by the Energy Division, and (ii) actual, reasonable expenditures supported by quarterly reporting with documentation to the Energy Division. The initial transfer should be an amount reasonably required by the third-party PA/PI, as determined by the Energy Division, to operate during the first quarter of the program implementation year.

24. SCE's proposed modifications would allow for pre-payment of incentive funding on a reasonable, as-needed basis. The Energy Division has the authority to adjust the funding amounts as the program is being administered, based on actual expenditures and observed trends in incentives payments.

25. Additionally, OP5(g) should include a requirement that the PA/PI adequately demonstrate with supporting documentation, including an attestation under penalty of perjury from an officer of the PA/PI, that it spent disbursed funds only on authorized program activities, to enable SCE to comply with OP 5(i).

26. Specifically, the Decision should be modified as follows (in **<u>bold underline</u>** and ~~strikethrough~~):

> 5.g. Transfer funds received in the SGIP HPWH balancing account (or subaccount) not needed for SCE's contracting expenses to the SGIP HPWH PA/PI **<u>on a quarterly basis</u>** within ~~30 days of execution of SCE's contract with the PA/PI, or within 30 days of receipt of the funds, whichever occurs last~~ **<u>10 business days of the Energy Division's approval of the SGIP HPWH PA/PI budget for such upcoming quarter, which budget should reasonably forecast the PA/PI's expenditures during the upcoming quarter and account for actual, reasonable expenditures incurred to date and any existing unspent, unallocated funding in the PA/PI's possession and require the PA/PI to demonstrate to the satisfaction of the Energy Division and SCE, through adequate supporting documentation including an attestation under penalty of perjury by an officer, that it has spent program funding only on authorized program activities;</u>**

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief.

Executed on July 18, 2022 in Rosemead, California.

<u>*/s/ Michelle Thomas*</u>
Michelle Thomas
Principal Manager, Customer Programs & Services