

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



**FILED**

Application of Pacific Gas and Electric Company (U 39 E) for Approval of its Demand Response Programs, Pilots and Budgets for Program Years 2023-2027.	Application 22-05-002 (Filed May 2, 2022)	09/20/22 10:23 AM A2205002
Application of San Diego Gas & Electric Company (U 902-E) Requesting Approval and Funding of its Demand Response Portfolio for Bridge Year 2023 and Program Years 2024-2027.	Application 22-05-003 (Filed May 2, 2022)	
Application of Southern California Edison Company (U 338-E) for Approval of Demand Response Programs and Budgets for 2023-2027.	Application 22-05-004 (Filed May 2, 2022)	

**JOINT MOTION OF CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT  
COUNCIL AND CPOWER FOR EXPEDITED CLARIFICATION OF  
ALJ TOY'S EMAIL RULING OF SEPTEMBER 16, 2022**

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September 20, 2022

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Pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure, the California Efficiency + Demand Management Council (“Council”) and CPower respectfully jointly move for Expedited Clarification of the Email Ruling of Administrative Law Judge’s (ALJ) Garrett Toy served on September 16, 2022 (“September 16 ALJ’s Email Ruling”).

Relevant to this request by the Council and CPower, the September 16 ALJ’s Email Ruling states:

“On September 14, 2022, Southern California Edison notified the service list that a meet and confer conference was held on September 9, 2022, with no parties requesting evidentiary hearing on issues related to the Demand Response Auction Mechanism (DRAM). Consequently, evidentiary hearings scheduled for September 22 and 23, 2022 are hereby cancelled. In accordance with Commission Rules of Practice and Procedure, Rule 13.8(c), parties are directed to prepare a Joint Motion for Admission of Evidence (Joint Motion) by no later than September 26, 2022. The Joint Motion must include as an attachment a list of all testimony and exhibits that the parties have or will submit, identified by party, by exhibit number (ex: ‘XYZ-01’), by a description of the exhibit, and with a ‘supporting documents’ link pursuant to Rule 137(f) [sic]. If all exhibits are to be moved into evidence without objection, the Joint Motion must so indicate. If any exhibit is not moved into evidence without objection, the Joint Motion must

include the moving party's proffer and the objecting party or parties' objection(s). If any exhibit is not moved into evidence without objection, a ruling as to the admissibility of that exhibit will be issued by September 28, 2022. All briefing references to exhibits must identify exhibits as they are identified in the Joint Motion." (September 16 ALJ's Email Ruling, at p. 3.)

In order to facilitate the ability of the Council and CPower to join the "Joint Motion" to be filed on September 26, 2022, the Council and CPower move for a response clarifying the following:

*Does the September 16 ALJ's Ruling authorize a party to include in the list of "testimony and exhibits" and to "proffer" in the Joint Motion a substantive "exhibit" that, as of this date and after the cancellation of hearings, has not been served on the service list in this proceeding, has not been uploaded as a "supporting document" identified as an exhibit of that party with a continuation of its exhibit numbering, and has not been expressly permitted by the ALJ to do so as a late-filing?*

This question is posed where the Council and CPower, in their long experience in Commission proceedings, are not aware of any circumstance where a substantive "exhibit" has been offered beyond the "adopted schedule" for the proceeding (Rule 13.8) except as an errata to previously and timely served testimony, as a cross-examination exhibit offered during evidentiary hearings with prior notice, or as a "late-filed" exhibit requested by a party, to which all parties can respond as to the merits of that request, and authorized by the ALJ to be offered for admission by separate motion.

In this case, evidentiary hearings were cancelled on September 16, 2022, and no exhibit, beyond those listed in the "supporting documents" page for this proceeding, which currently lists the final exhibit as having been uploaded on September 7, 2022, has been served on the service list in this proceeding as of the date of this Motion. The Council and CPower have also not been served with any request made and permission granted by the ALJ for a party to serve any exhibit after the cancellation of hearings.

In those circumstances, it is the position of the Council and CPower that the addition and proffer of a substantive exhibit for the first time as part of the September 26 Joint Motion and exhibit list after cancellation of hearings is not only at odds with Commission practice, but highly prejudicial to other parties, where the sponsoring party has not requested and received permission by the ALJ to “proffer” such a late-filed exhibit. That due process concern is not altered by the fact that, at this late date, objections to that proffer could be raised in the Joint Motion where parties did not have the opportunity to address the merits of the ALJ authorizing such a late-filed exhibit in the first place. Further, allowing that outcome in the Joint Motion also results in convoluted, multiple requests for relief, first, for admission of exhibits supported by all parties, and second, for a ruling on a proffer of an exhibit that has yet to be served on all parties to this proceeding and uploaded as a supporting document. It is the position of the Council and CPower that such a motion is in conflict with Rule 11.1 that limits party motions to a single request for a single action.

Because the due date for the Joint Motion is September 26, 2022, the Council and CPower move for an expedited ruling clarifying and responding to the question posed above in italics. If that ruling is not provided before September 26, 2022, the Council and CPower will be unable to join the Joint Motion without waiving their objections to a process that allows the addition of such an exhibit in a manner that fails to preserve their due process rights. Finally, while the Council and CPower will abide by a ruling responding to this Motion, depending on that outcome, both reserve the right to object to it in briefs as necessary to preserve their due process rights.

Respectfully submitted,

September 20, 2022

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On Behalf of CPower and the Council

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