

ALJ/GT2 /cmf 9/29/2022



**FILED**

09/29/22

10:19 AM

AP205002

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

Application of Pacific Gas and Electric Company (U39E) for Approval of its Demand Response Programs, Pilots and Budgets for Program Years 2023-2027.

Application 22-05-002

And Related Matters.

Application 22-05-003

Application 22-05-004

**E-MAIL RULING ON JOINT MOTION TO ADMIT EVIDENCE  
ON DEMAND RESPONSE AUCTION MECHANISM**

Dated September 29, 2022, at San Francisco, California.

/s/ GARRETT TOY

Garrett Toy

Administrative Law Judge

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**Subject:** A.22-05-002 et al.; Administrative Law Judge Ruling on Joint Motion to Admit  
Evidence on DRAM

To the service list in A.22-05-002, et al., PG&E, SCE, and SDG&E Demand Response  
Applications:

On September 26, 2022, Pacific Gas and Electric Company (PG&E) filed a Joint Motion for Admission of Exhibits Pertaining to Phase I Scoped Issue Regarding Demand Response Auction Mechanism (Joint Motion). The parties in this proceeding stipulated to and requested admission for a number of exhibits without cross-examination. One exhibit, proffered by Southern California Edison Company (SCE) and preliminarily marked as SCE-09, consisting of

the Demand Response Auction Mechanism Evaluation conducted by Nexant (Nexant Report), was disputed by the California Efficiency + Demand Management Council, CPower, Voltus, Inc., and Leapfrog Power, Inc. (collectively, the Objectors).

In this proceeding, the Nexant Report was added to the record on July 5, 2022 via the Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo), for comment by the parties. On July 7, 2022, the Nexant Report was the subject of a workshop which included a question and answer session with Nexant, the report's authors. On July 14, 2022, an Administrative Law Judge (ALJ) ruling was issued, stating that "parties have opportunity to address any aspect of the Report's substantive information and conclusions."

In the Joint Motion, SCE states that admission of the Nexant Report is needed in order to complete the evidentiary record. Supplemental and reply testimony was submitted that extensively considered the Nexant Report, and future Opening and Reply Briefs may do so as well. SCE also states that the Commission's Rules of Practice and Procedure do not require the Commission to follow the technical rules of evidence, and that Rule 13.7 does not require a sponsoring witness where a party offers into evidence a document that party did not prepare. SCE states that the California Court of Appeals has granted the Commission broad authority to admit hearsay evidence, as the Commission's factfinders are more sophisticated than a lay jury. SCE also references the Commission's reliance on the residuum rule, whereby hearsay evidence may be admitted if it is not used as the sole factual basis for a factual finding by the Commission, and any such finding must be corroborated by other competent substantial evidence. SCE concludes by stating that the Nexant Report was a Commission-ordered and supervised evaluation of the Demand Response Auction Mechanism, and its use as a reference point for party testimony means its addition to the evidentiary record is needed. SCE also states that parties were given an opportunity to participate in a workshop, collect discovery, and had the option to timely request evidentiary hearings, and therefore no due process rights will be violated by the inclusion of the Nexant Report in the evidentiary record. The Public Advocates Office, PG&E, and San Diego Gas & Electric Company (SDG&E) support the inclusion of the Nexant Report in order to ensure a complete and accurate evidentiary record. SDG&E and PG&E note that it would be confusing to have party comment in the record on the Nexant Report but not the report itself, and they also note that inclusion of the Nexant Report into the record does not mean parties must agree to the findings therein.

The Objectors request that SCE-09, the Nexant Report, be excluded from the evidentiary record. The Objectors note that the Nexant Report was not initially served by SCE when prepared testimony and accompanying exhibits were to be served as set in the Scoping Memo. The Objectors state that SCE would therefore be required to receive authorization by the ALJ for SCE to submit the Nexant Report into evidence. By waiting to offer the Nexant Report into evidence after the cancellation of evidentiary hearings, the Objectors claim that SCE has precluded their ability to object, conduct discovery, or request hearings on the Nexant Report. The Objectors also state that the workshop on the Nexant Report was informal and not recorded, and that thus far the Nexant Report had only been used to inform comments to the proceeding, and the intent to enter it into the evidentiary record was not stated in the Scoping Memo or by any party previously. Finally, the Objectors state that if the Nexant Report is

moved into the evidentiary record, it should be given little weight, as it is hearsay evidence and has not been authenticated.

The Commission appreciates the parties' adherence to this expedited schedule. Upon review of the above, and given the ALJ ruling of July 14, 2022, limiting the use of the Nexant Report in this phase of the proceeding, the exhibit that was marked as SCE-09, the Nexant Report, will not be admitted into the evidentiary record at this time. SCE also did not provide sufficient notice of the Nexant Report's proposed admission into evidence.

**It is so ruled.**

The Commission's Docket Office shall formally file this ruling.

**Garrett Toy**  
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California Public Utilities Commission  
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