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**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

**ASSIGNED COMMISSIONER'S AMENDED SCOPING MEMO AND RULING AND ASSIGNED ADMINISTRATIVE LAW JUDGES' RULING ON TWO MOTIONS**

The Assigned Commissioner's Scoping Memo and Ruling, issued on July 5, 2022, set forth the category, issues to be addressed, need for hearings, designation of a presiding officer, and schedule for consolidated proceedings Application (A.) 22-05-002, A.22-05-003, and A.22-05-004 (Phase I Scoping Memo). Today's Assigned Commissioner's Amended Scoping Memo and Ruling and Assigned Administrative Law Judge's Ruling on Two Motions (Amended Scoping Memo) does the following: (1) supersedes and amends both the scope of issues and the procedural schedule in the Scoping Memo for Phase I; (2) denies the Public Advocates Office of the California Public Utilities Commission's (Cal Advocates) motion to dismiss San Diego Gas & Electric's (SDG&E's) A.22-05-003 relating to Phase II of this proceeding; and (3) grants Tesla, Incorporated's (Tesla's) motion for party status. Otherwise, this Amended Scoping Memo affirms, inter alia, the Phase I Scoping Memo's determinations of

category, need for hearings, and designation of presiding officers in A.22-05-002, A.22-05-003, and A.22-05-004.

## **1. Procedural Background**

Demand Response (DR) programs encourage reductions, increases, or shifts in electricity consumption by customers in response to economic or reliability signals. Such programs can provide benefits to ratepayers by reducing the need for construction of new generation and the purchase of high-priced energy, among others. Commission Decision (D.) 17-12-003 directed Pacific Gas and Electric Company (PG&E), SDG&E, and Southern California Edison Company (SCE) (collectively, the Utilities or Applicants) to file, by November 1, 2021, their 2023-2027 Demand Response Portfolio Applications. A September 30, 2021, letter issued by the Commission's Executive Director extended the deadline to May 2, 2022.

On May 2, 2022, PG&E (A. 22-05-002), SDG&E (A.22-05-003), and SCE (A.22-05-004) filed their respective 2023-2027 DR portfolio applications. Pursuant to Rule 7.4, an Administrative Law Judge (ALJ) Ruling issued on May 25, 2022, consolidated these applications (A.22-05-002 et al.).

A prehearing conference (PHC) was held on June 16, 2022, to discuss the scope, schedule, and other procedural matters. The initial Assigned Commissioner's Scoping Memo and Ruling (Scoping Ruling) was issued on July 5, 2022, setting a phased approach to this proceeding. Phase I would address 2023 Bridge Year Demand Response Programs, as well as the question of whether to approve the Demand Response Auction Mechanism (DRAM) Pilot for an additional 2024 program year. These initial applications would not consider wide-scale changes to the Utilities DR programs or the DRAM. Phase II would address the 2024-2027 Utilities' Demand Response Programs as well as

the future of the DRAM beyond 2024. D.22-12-009, issued on December 6, 2022, approved the Utilities' 2023 Bridge Year Demand Response Programs. A proposed decision on whether to continue the Demand Response Auction Mechanism for 2024 was mailed for comment on December 9, 2022.

A second PHC was held on October 25, 2022, to discuss the scope and schedule of Phase II of this proceeding. After considering the Applications and Protests filed earlier in this proceeding, and discussion at the prehearing conference, I have determined the issues and schedule of the proceeding to be as set forth in this Amended Scoping Memo.

## **2. Utilities' Failure to Provide DR Cost-Effectiveness Report with Applications**

After a review of the Applications, I have determined that the Utilities are currently in breach of a directive in the 2016 Demand Response Cost-Effectiveness Protocols requiring they submit the DR Cost-Effectiveness Reports described therein with their applications seeking program approval for the 2024- 2027 DR cycle. The 2016 Demand Response Cost-Effectiveness Protocols explicitly state that the DR Cost-Effectiveness Report "spreadsheet ...[itself] must also be filed as part of the application."<sup>1</sup> We therefore direct the Utilities to submit their DR Cost-Effectiveness Reports spreadsheets as Supplemental Testimony by February 3, 2023. Due to the potentially large size of the DR Cost-Effectiveness Report, links to electronic versions of the spreadsheet in the Supplemental Testimony are acceptable. Per the Protocols, "the spreadsheet file that is submitted should be named in a way that makes it obvious what it contains (e.g., 'SCE DR Report.xls')."

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<sup>1</sup> 2016 Demand Response Cost-Effectiveness Protocols, at 10.

### **3. Scoping Issues**

As discussed above, this proceeding was to be addressed in two Phases. This Amended Scoping Memo will lay out the issues and schedule for Phase II of this proceeding. These Phase II issues will address the 2024-2027 DR program proposals as well as the DRAM's future beyond 2024. The issues are broken down below into those pertaining to the Utilities' 2024-2027 Demand Response Programs and those relating to the future of the DRAM.

#### **3.1. Phase I Scoping Issues**

1. Do the applications of PG&E, SCE, and SDG&E requesting approval of DR programs and budgets for Year 2023 advance the goals, principles, and guidance adopted in D.16-09-056 and comply with the directives in D.16-09-056, D.17-12-003, D.21-03-056, and D.21-12-015 as well as other relevant directives listed in prior Commission decisions and rulings?<sup>2</sup>
2. Are the Utilities' proposed 2023 changes to programs and activities, including pilot recommendations and Rule 24 Program Information Technology system enhancements, reasonable and should they be adopted? Similarly, are parties' proposed changes to utilities' programs reasonable?
3. Are the Utilities' requested budgets to implement the proposed programs and cost and rate recovery requests, including continued fund shifting flexibility, reasonable?
4. Are the Utilities proposed programs and portfolios cost-effective pursuant to cost-effectiveness protocols adopted in D.15-11-042 and D.16-06-007? If they are not cost-effective, should they be adopted?

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<sup>2</sup> Specifically, the applications should comply with directives included, but not limited to those in D.12-04-045, D.14-12-024, D.15-03-042, D.16-06-008, and D.16-06-029, as well as D.16-09-056.

5. Should ratepayers provide \$750,000 in 2023 for continued modeling of DR potential and related research overseen by Energy Division?
6. Should the Utilities be directed to conduct Auction Mechanism solicitations in 2023, for 2024 deliveries, as a continued pilot without further technical refinements, and if so, what budget should be authorized?

**3.2. Phase II Scoping Issues for 2024-2027  
Utilities' Demand Response Programs**

1. Do the applications of PG&E, SCE, and SDG&E requesting approval of Demand Response Programs and budgets for Years 2024 through 2027 advance the goals, principles, directives, and guidance adopted in D.16-09-056 and comply with the directives in D.16-09-056, D.17-12-003, and D.21-03-056, as well as other directives in Commission decisions and rulings under the DR, summer reliability, and other applicable proceedings?
2. Are PG&E's, SDG&E's, and SCE's proposed demand response programs and activities, including pilot recommendations, Emergency Load Reduction Program, and modifications to existing programs and policies, reasonable, and should they be adopted?
  - a. Are parties' proposed changes, including those presented for the 2023 Bridge Year but not addressed by the Commission in Phase I, to Utilities' programs reasonable?
  - b. Are PG&E's, SCE's, and SDG&E's proposed demand response activities and programs, including pilot recommendations and proposals presented for the 2023 Bridge Year but not addressed by the Commission in Phase 1, reasonable, and should they be adopted?
  - c. To improve program cost-effectiveness, usefulness, and system reliability, should the Commission consider design changes to RA-eligible emergency DR programs, such as (but not limited to) dispatch conditions and

requirements, compensation & penalties, and performance measurement techniques?

- d. Should the temporary increase in the DR reliability cap to 3 percent be extended?
3. Did PG&E, SCE, and SDG&E accurately follow the Commission's DR cost-effectiveness protocols to determine their programs' cost-effectiveness score, and are their programs cost-effective?
4. Are PG&E's, SCE's, and SDG&E's requested budgets to implement the proposed demand response and Rule 24/32 programs, including pilot recommendations, cost allocations, and related cost recovery requests, reasonable?
5. Should fund-shifting rules be revised to allow Utilities greater discretion?
6. What program reporting requirements and schedules should the Utilities be required to follow?
7. Do the demand response programs proposed by PG&E, SCE, and SDG&E adequately take into consideration the Commission's Environmental and Social Justice Action Plan? How should the programs be modified to better meet the needs of environmental justice communities?
8. Should the Commission continue the exemption of energy storage resources not coupled with fossil-fueled generation from the Demand Response Prohibited Resources Policy (as established in D.18-06-012)?
9. Should dual participation rules be modified or clarified?
10. Should ratepayers provide funding in 2024-2027 for continued modeling of DR potential and related research overseen by Energy Division?

A larger scope of issues was previously discussed at the October 25, 2022, PHC with regard to the 2024-2027 Demand Response Programs. Due to the expansive nature of this proceeding,

as well as in recognition of the number of outstanding issues relating to the DRAM, the scope has been reduced.

**3.3. Phase II Scoping Issues Regarding the Future of the DRAM**

1. Should the DRAM be adopted as a permanent program?
  - a. If so, what modifications and budget should be authorized?
2. Should the DRAM be continued as a pilot?
  - a. If so, what evaluation standards, modifications, and budget should be authorized?
3. Should the DRAM be ended?
  - a. If the DRAM is ended, what actions, if any, should the Commission take to provide alternative pathways for third parties to participate in DR?
4. If the DRAM is continued, what information related to the solicitation processes and the bidding, dispatch, and delivery of DRAM resources should be considered confidential, and what should be reported publicly and/or confidentially?

We note here that to continue the DRAM the Commission must affirmatively find in this Phase II that the DRAM has been successful in achieving its goals of ensuring cost-effective and reliable demand response resources.<sup>3</sup> In considering this issue, we will consider a number of factors, including those laid out in the DRAM Evaluation Report written by Resource Innovations (formerly known as Nexant) in partnership with Gridwell Consulting (Nexant Report).<sup>4</sup>

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<sup>3</sup> D.16-09-054, at 64.

<sup>4</sup> *Id.* At 65.

**4. Need for Evidentiary Hearing**

At the PHC, parties expressed the possibility of needing evidentiary hearings, but did not request them at this time. We still expect that there may be factual issues that could be informed by evidentiary hearings, though they may not be required. Accordingly, we leave open the possibility that evidentiary hearing may be needed, and will schedule evidentiary hearings, as necessary or requested, during the course of the proceeding.

**5. Schedule**

Given the expansive scope of this proceeding and time constraints due to the need to approve 2024-2027 DR programs with sufficient time for the Utilities to implement changes, the Commission will again follow the same decision pattern as Phase I of this proceeding, with a 2024-2027 DR Programs proposed decision to issue prior to a DRAM-specific proposed decision. The following revised schedule is adopted here and may be modified by the assigned Commissioner and/or ALJ as required to promote the efficient and fair resolution of the Rulemaking:

**2024-2027 Utilities’ Demand Response Program Schedule**

| Event  | Date             |
|--|------------------|
| Applicants’ Supplemental Testimony with DR Cost Effectiveness Report As Required by 2016 DR Cost Effectiveness Protocols Due | February 3, 2023 |
| Phase II DR Utilities’ Supplemental Testimony Due  | March 3, 2023    |
| Phase II DR Intervenor Testimony Due   | April 7, 2023    |
| Phase II DR Concurrent Rebuttal Testimony Due  | April 28, 2023   |



|   |                    |
|---|--------------------|
| Meet and Confer to Determine Need for Evidentiary Hearings on DR Program Issues | May 5, 2023        |
| Last Day to Request Evidentiary Hearing and Conduct Discovery                   | May 8, 2023        |
| Evidentiary Hearings, if necessary  | May 17-18, 2023    |
| Concurrent Opening Briefs on Phase II DR  | July 21, 2023      |
| Concurrent Reply Briefs on Phase II DR  | August 18, 2023    |
| Last Day to Request Oral Argument   | September 7, 2023  |
| Oral Argument   | September 14, 2023 |
| Proposed Decision   | October 2023       |

**DRAM Schedule**

| <b>Event</b>  | <b>Date</b>         |
|---|---------------------|
| Concurrent Opening Testimony Due on DRAM                                  | May 31, 2023        |
| Concurrent Reply Testimony Due on DRAM                                    | July 14, 2023       |
| Meet and Confer to Determine Need for Evidentiary Hearings on DRAM Issues | August 1, 2023      |
| Last Day to Request Evidentiary Hearing and Conduct Discovery             | August 11, 2023     |
| Evidentiary Hearings  | End of August, 2023 |
| Opening Briefs on DRAM  | September 30, 2023  |
| Concurrent Reply Briefs on DRAM   | November 3, 2023    |
| Proposed Decision   | January 2024        |

The purpose of the May 5, 2023 and August 1, 2023 Meet and Confer meetings are to ascertain whether, pursuant to Rule 13.8(c), the parties stipulate to the receipt of prepared testimony into evidence without direct or cross

examination or other need to convene an evidentiary hearing or, in the alternative, the parties' resources, readiness and needs for the effective remote conduct of the evidentiary hearing, including estimates of time requested for cross-examination and identification of anticipated exhibits.

The organization of prepared testimony, comments, and briefs must correlate to the issues identified in this Scoping Memo or other rulings directly seeking specific input from parties to this proceeding.

A ruling will follow shortly with questions from the Commission's Energy Division seeking party testimony and comment on more directed questions than those listed in the Scoping Memo. Additionally, the Energy Division is currently preparing proposals for programmatic DR changes for party consideration, with a release to come before the due date of Phase II DR Opening Testimony (March 3, 2023).

Evidentiary hearings, if needed for Phase II DR issues, would take place on May 17 and 18, 2023. Depending on the need for evidentiary hearings, the briefing schedule may be altered for Phase II, in response to comments by multiple parties at the PHC. Under this expedited schedule, the record with regards to Phase II will stand submitted upon the filing of reply comments.

Evidentiary hearings, if needed for Phase II DRAM issues, would take place in late August of 2023. Depending on the need for evidentiary hearings, the briefing schedule may be altered.

## **6. Outstanding Motions**

On August 26, 2022, Cal Advocates filed a Rule 11.2 Motion to Dismiss SDG&E's DR Application (Motion) relating to Phase II of this proceeding. The Motion argues that SDG&E's DR Application relating to funding years 2024-2027 should be dismissed because it fails to demonstrate SDG&E's ability to meet the

Commission's directed cost-effectiveness element. The Motion also contains an alternative proposal that SDG&E's territory for the funding years 2024-2027 should have its DR programs administered by a third-party regional or statewide administrator. SCE, SDG&E, and PG&E each filed Responses opposing the Motion. Cal Advocates filed a Reply to those responses.

Rule 11.2 enables a motion to dismiss a proceeding based on the pleadings. The Commission has determined that a motion to dismiss applies the same standard as a motion for summary judgment in civil court, *i.e.*, that "[t]he moving party must make a prima facie showing of the non-existence of any triable issue of material fact" such that the Commission may reach a determination as a matter of law. (*See* D.20-11-056 at 4.) Stated otherwise, if an application raises one or more triable issues of material fact, then it must be resolved as part of the proceeding's fact-finding process.

Cal Advocates' Motion is denied on two independent bases. First, the Motion's arguments inherently go toward the weight of the issues on their merits, specifically the cost-effectiveness of SDG&E's proposed funding years 2024-2027 DR programs and the nature of that calculation. SDG&E's Response argues in part that the issue of the potential cost-effectiveness in its territory is essentially factual for the following reasons:

1. The cost-effectiveness of DR programs in SDG&E's territory is subject to its unique characteristics;
2. The function of the cost-effectiveness calculation has been altered (for all of the IOUs);
3. SDG&E's efforts to improve its DR program administration and cost-effectiveness scores must be considered;
4. There is no evidence that a regional or statement administrator would be more cost-effective; and

5. The nature of cost-effectiveness calculation should be reconsidered.

Therefore, the issue of SDG&E's Application's substantive merit must be considered not on a dispositive basis pursuant to a Motion to Dismiss, but should be considered in the fullness of this proceeding regarding the Application's ability to substantively demonstrate its merit in light of all evidence and argument. Second, regarding this proceeding's somewhat unusual procedural posture, it is recognized that SDG&E was directed to file its Application by the Commission in an earlier decision regarding this DR pilot program (*see* D.17-12-003 at 28-29, OP 61), and therefore the Commission should not dismiss an Application that the Commission had directed a party to bring.

Because we deny the Motion to dismiss, we do not here consider the merits of the Motion's proposed alternative regarding the possible appointment of a third-party regional or state administrator to administer SDG&E's DR programs for the funding years 2024-2027.

Tesla's October 26, 2022, Motion for Party Status complies with all rules and is granted. Damon Franz will be added to the service list as Tesla's party representative.

## **7. Alternative Dispute Resolution (ADR) Program and Settlements**

The Commission's ADR program offers mediation, early neutral evaluation, and facilitation services, and uses ALJs who have been trained as neutrals. At any party's request, the assigned ALJs can refer all or part of this proceeding to the Commission's ADR Coordinator. Additional ADR information is available on the Commission's website.<sup>5</sup>

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<sup>5</sup> *See* D.07-05-062, Appendix A, § IV.O.

Any settlement between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Rules and shall be served in writing. 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.

### **8. Category of Proceeding and *Ex Parte* Restrictions**

The category of this proceeding will remain ratesetting, as set by the original Scoping Memo. *Ex parte* communications are permitted, but with restrictions and reporting requirements, pursuant to Article 8 of the Rules.

### **9. Public Outreach**

Pursuant to Pub. Util. Code Section 1711(a), I hereby report that 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 businesses that subscribe to it and posted on the Commission's website.<sup>6</sup>

In addition, the Commission served the ruling noticing the PHC on the following related service lists:

| <b>Proceeding Topic</b> | <b>Proceeding Number</b>              |
|-------------------------|---------------------------------------|
| Demand Response         | R.13-09-011 and<br>A.17-01-012 et al. |
| Summer Reliability      | R.20-11-003                           |

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<sup>6</sup> Working for California June 2022 Newsletter at page 7.

In the interest of broad notice, this scoping ruling will also be served on the following state and local agencies: the California Energy Commission; and the California Air Resources Board.

#### **10. Intervenor Compensation**

Pursuant to Pub. Util. Code Section 1804(a)(1), a customer who intends to seek an award of compensation on Phase I issues is required to file and serve a notice of intent to claim compensation by January 18, 2023.

#### **11. 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 the proceeding.

#### **12. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission’s Public Advisor at 1-866-849-8390 or 1-866-836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

#### **13. 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 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.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding 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. Although Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents, parties are directed to only serve ALJs Toy and Jungreis electronically in this proceeding.

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 the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the “Information Only” category of the official service list pursuant to Rule 1.9(f).

The Commission encourages those who seek information-only status on the service list to consider the Commission’s subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other filters. Notifications can be for a specific proceeding, a range of documents and daily or weekly digests.

#### **14. Receiving Electronic Service from the Commission**

Parties and other persons on the service list are advised that it is the responsibility of each person or entity on the service list for Commission

proceedings to ensure their ability to receive e-mails from the Commission. Please add “@cpuc.ca.gov” to your e-mail safe sender list and update your e-mail screening practices, settings and filters to ensure receipt of e-mails from the Commission.

**15. Assignment of Proceeding**

John Reynolds is the assigned Commissioner and Garrett Toy and Jason Jungreis are the assigned ALJs for the proceeding.

**IT IS RULED** that:

1. The amended scope of this proceeding as described in Section 3 above is adopted.
2. The amended schedule of this proceeding is adopted as set forth in Section 5. The assigned Commissioner and/or Administrative Law Judges may adjust the schedule of this proceeding, as needed, to promote efficient management of the case.
3. Evidentiary hearing may be needed. For Phase II Demand Response issues, no later than May 8, 2023, parties may request evidentiary hearing on contested issues, as appropriate. On Phase II Future of Demand Response Auction Mechanism issues, parties may request evidentiary hearing no later than August 11, 2023.
4. The category of the proceeding is ratesetting.
5. The presiding officers are Administrative Law Judges Garrett Toy and Jason Jungreis.
6. The Public Advocates Office of the California Public Utilities Commission’s Motion to Dismiss San Diego Gas & Electric’s Application is denied.
7. Tesla, Incorporated’s Motion for Party Status is approved.



This order is effective today.

Dated December 19, 2022, at San Francisco, California.

/s/ JOHN REYNOLDS

John Reynolds  
Assigned Commissioner

/s/ GARRETT TOY

Garrett Toy  
Administrative Law  
Judge