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FILED

05/10/23

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DRAM

A2205002

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

ADMINISTRATIVE LAW JUDGE’S RULING GRANTING LIMITED ACCESS TO DEMAND RESPONSE AUCTION MECHANISM REPORT DATA AND ALTERING PROCEEDING SCHEDULE

Pursuant to the Administrative Law Judge (ALJ) Ruling issued on March 3, 2023, this ruling addresses party comments on Questions 1A and 1B related to sharing data used in the Demand Response Auction Mechanism (DRAM) Evaluation Report (or Nexant Report). This ruling sets forth provisions for the review by DRAM sellers and non-market participants of confidential versions of the Nexant Report and market-sensitive data that went into the DRAM evaluation. This ruling extends the deadline for the filing of Phase II DRAM Opening Testimony to June 14, 2023.

1. Background

On May 2, 2022, Pacific Gas and Electric Company (PG&E) Application (A.) 22-05-002, San Diego Gas & Electric Company (SDG&E) A.22-05-003, and Southern California Edison Company (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.

On June 24, 2022, the DRAM Evaluation Report submitted by Resource Innovations (formerly known as Nexant) in partnership with Gridwell Consulting (Nexant Team) evaluating the DRAM from 2018 to 2021 (Nexant Report) was released to the public. The Nexant Report contained redactions related to third-party DRAM Seller data. The July 5, 2022 Assigned Commissioner's Scoping Ruling (Original Scoping Ruling) added the Nexant Report to the proceeding record.

The Original Scoping Ruling divided this proceeding into two phases. Phase I would address the Utilities' 2023 Bridge Year funding requests and Phase II would address the Utilities' Applications for the years 2024-2027. The Assigned Commissioner's Scoping Memo and Ruling identified scoping issues for Phase I, including a one-year extension of DRAM for 2024 deliveries, and added the Nexant Report, which was included as Attachment 1, to the proceeding record.

An Amended Assigned Commissioner's Scoping Memo (Amended Scoping Ruling) establishing the scoping issues and procedural schedule for Phase II, including the future of DRAM beyond 2024, was issued on December 19, 2022.

1.1. Nexant Data Ruling

On July 14, 2022, an ALJ ruling was issued in response to procedural questions related to the Nexant Report and stated that there would be a later opportunity for parties to comment on the Nexant Report when the proceeding addressed the future of DRAM beyond 2024.

On January 13, 2023, the Commission approved the DRAM pilot for delivery year 2024 in Decision (D.) 23-01-006. In addition, D.23-01-006 noted that the DRAM pilot could simply be allowed to sunset and stated that in order to transition the DRAM out of pilot status, the record developed in Phase II must show at a minimum that DRAM achieved a sufficient level of success in meeting the six criteria adopted in D.16-09-056 for determining the success of the pilot.¹

On March 3, 2023, an Administrative Law Judge Ruling was issued seeking party comment on DRAM questions and providing an updated Nexant Report with less redactions (Updated Nexant Report) to the parties (Nexant Data Ruling). A number of questions related to the Updated Nexant Report were provided. Questions 1A and 1B of the Nexant Data Ruling were specifically related to sharing data used in the Updated Nexant Report, and parties were directed to file responses to these questions earlier than other questions in the Nexant Data Ruling. Questions 1A and 1B asked that parties address and consider the following questions and scenarios:

1. If the Commission were to consider allowing the parties to request additional information on the Updated Nexant Report, it may be prudent to set certain boundaries on the sharing of data and evaluation results to protect market-sensitive information. In the event that the request for additional information is granted, should the Commission adopt the following provisions?
 - a. Each DRAM seller would be provided with an individualized version of the Updated Nexant Report with their respective results unredacted, and all data specific to each seller used in the evaluation would be provided to the respective DRAM seller but not to other sellers.

¹ D.23-01-006 at 20, 22.

- b. The confidential version of the Updated Nexant Report and all data used in the evaluation would be provided to the Commission's Public Advocates' Office, and any other non-market participant that is a party to this proceeding upon request that agrees to sign a Non-Disclosure Agreement with the Commission. Requests for the Non-Disclosure Agreement form shall be directed to the Commission's Legal Division. Requests for the confidential Updated Nexant Report and evaluation data shall be directed to the Commission's Energy Division staff.

Opening comments on these topics were received from SCE, SDG&E, PG&E, and the California Efficiency + Demand Management Council (Council) on March 30, 2023. Reply Comments were received on April 14, 2023, from the California Independent System Operator (CAISO),² the Council and PG&E.

2. Party Comment on Nexant Data Ruling

With regards to Question 1A, parties did not object to the sharing of individualized versions of the Updated Nexant Report and the underlying data used in the evaluation with the DRAM sellers. PG&E noted that this process should not be precedential.³ SCE, PG&E, and SDG&E raised due process questions raised by potentially differing access levels to DRAM seller data, and propose that should any DRAM seller seek to present its data to support of its position with regards to the Updated Nexant Report, the confidentiality of such

² The CAISO submitted a Motion for Party Status on April 14, 2023, which was granted by ALJ ruling on April 21, 2023. CAISO's Reply Comments were accepted as filed on April 14, 2023.

³ PG&E Opening Comments on Nexant Data Ruling, March 30, 2023, at 2.

data shall be waived and the data will be made available for all parties in this proceeding to review.⁴

With regards to Question 1B, no party disputed The Public Advocates' Office's (Cal Advocates) full access to the Updated Nexant Report and all related data.⁵ However, several parties had concerns about sharing the confidential report with other non-market participants because the term "non-market participant" has not been clearly defined, or raised concerns about fairness and due process.⁶ SDG&E states that non-market participants other than Cal Advocates should have the same access to data as the IOUs and all other parties.⁷ PG&E expressed support for SCE and SDG&E's proposal; while the Council argued that limiting DRAM seller access to their data would infringe upon DRAM sellers' rights to discovery, while waiving confidentiality claims for DRAM sellers that seek to use their data to contest the findings of the Updated Nexant Report and is unsupported by citations to relevant authority.⁸

The CAISO made several comments on the process that the Commission should follow if it took this course of action. Certain data used in the development of the Updated Nexant Report was obtained from the CAISO via an annual subpoena, which requires the Commission to keep such data

⁴ SCE Opening Comments on Nexant Data Ruling, March 30, 2023, at 4; SDG&E Opening Comments on Nexant Data Ruling, March 30, 2023, at 3-4; PG&E Opening Comments on Nexant Data Ruling, April 14, 2023, at 3.

⁵ Council Opening Comments on Nexant Data Ruling, March 30, 2023 at 2-3; PG&E Opening Comments on Nexant Data Ruling, at 2-3; SCE Opening Comments on Nexant Data Ruling, at 4.

⁶ Council Opening Comments on Nexant Data Ruling, at 3; SCE Opening Comments on Nexant Data Ruling, at 4; SDG&E Opening Comments on Nexant Data Ruling, at 4.

⁷ SCE Opening Comments on Nexant Data Ruling, at 4; SDG&E Opening Comments on Nexant Data Ruling, at 4.

⁸ PG&E Reply Comments on Nexant Data Ruling, at 3; Council Reply Comments on Nexant Data Ruling, at 1-2.

confidential. According to the CAISO, the Commission should ensure there is a suitable protective order or non-disclosure agreement between the Commission and any party that receives confidential data or confidential versions of the Updated Nexant Report and should coordinate with the CAISO in advance of any release of confidential data or versions of the Updated Nexant Report to allow time for a market notice.⁹

3. Discussion

After reviewing the comments filed by parties, additional confidential Nexant Report data shall be provided to certain parties in the following manner:

1. Each DRAM seller participating in this proceeding shall be provided with the opportunity to receive an individualized version of the Nexant Report with their respective results unredacted, as well as all confidential data specific to that seller used in the evaluation (Protected Materials). The Commission's Energy Division shall contact each DRAM seller to facilitate the process. All confidential DRAM seller data shall be subject to a Protective Order (Attachment 1).
2. Cal Advocates and other non-market participants¹⁰ shall be provided with an opportunity to review the confidential version of the Nexant Report as well as any related data (all Protected Materials). The Protected Materials shall be subject to the same Protective Order, and any non-market participant party representative or employee who will

⁹ CAISO Reply Comments at 3.

¹⁰ Non-Market Participants are defined as 1) An employee of: (a) a state governmental agency other than the California Energy Commission (CEC) that (i) is not a Market Participating Party as defined in Paragraph 3(h)(1) hereof, and (ii) is statutorily authorized to obtain access to confidential data held by another state governmental agency upon execution of a written agreement to treat the data s obtained as confidential, as provided in Government Code Section 6254.5(e); or, (b) any other consumer or customer group that Commission Staff determines has a bona fide interest in participating on behalf of end-use customers in in this proceeding, and which group is not a Market Participant as defined in the Protective Order (Attachment 1) in paragraph 3(d). Final determinations on which parties and organizations qualify as Non-Market Participants shall be made by an ALJ in this proceeding.

review the data (Reviewing Representative) must also sign a Non-Disclosure Agreement (NDA) (Attachment 2) before access is granted.¹¹ Any non-market participant who seeks access to the Protected Materials shall submit its request to the Commission by May 16, 2023,¹² with a notification to the service list of the request. Other parties have until May 19, 2023 to object to any request for access to the Protected Materials either as to the party as a whole or as to the Reviewing Representative.

3. Consistent with existing CPUC processes and Decisions, DRAM sellers and non-market participants that wish to utilize Protected Materials to support their position in this proceeding, such parties may serve confidential testimony, with service of a corresponding public version with confidential information redacted.

This process will allow DRAM sellers and non-market participants to review the Nexant Report's data and results, increasing the transparency of the evaluation process and providing opportunities for stakeholder involvement and input, while also ensuring that the Protected Materials remain confidential pursuant to Commission and CAISO confidentiality rules.

4. Phase II DRAM Opening Testimony Due Date

The Amended Scoping Ruling set a date of May 31, 2023 for the serving of Phase II DRAM Opening Testimony. The due date for Phase II DRAM Opening Testimony is changed to June 14, 2023, to give parties sufficient time to consider the additional data. The due date for Phase II DRAM Reply Testimony is changed to July 21, 2023.

¹¹ Signed Non-Disclosure Agreements shall be sent to the Commission's Legal Division at elizabeth.dorman@cpuc.ca.gov as well as the Assigned ALJs at garrett.toy@cpuc.ca.gov and jason.jungreis@cpuc.ca.gov.

¹² Requests shall be directed to the Commission's Legal Division, Elizabeth Dorman, at elizabeth.dorman@cpuc.ca.gov, with the service list cc'd.

IT IS RULED that:

1. The Commission adopts the Protective Order in Attachment 1 regarding the confidentiality of market sensitive data and information from the DRAM Evaluation.
2. The Commission designates any version of the Updated Nexant Report in which market-sensitive data is unredacted in part or in full as well as any DRAM Evaluation data used in the Updated Nexant Report as Protected Materials that will be governed by the terms of the Protective Order.
3. Any non-market participant seeking access to the Protected Materials shall identify their selected Reviewing Representatives to all other parties and the Commission along with a curriculum vitae for each proposed Reviewing Representative. Non-market participant Reviewing Representatives shall execute the NDA in Attachment 1 and submit it to the Commission's Legal Division.
4. The Commission's Energy Division Staff will facilitate the transfer of data to non-market participants' Reviewing Representatives after a satisfactory NDA is provided to the Commission.
5. The due date for Phase II DRAM Opening Testimony is changed to June 14, 2023. The due date for Phase II DRAM Reply Testimony is changed to July 21, 2023.

This order is effective today.

IT IS SO RULED.

Dated May 10, 2023, at San Francisco, California.

 /s/ JASON JUNGREIS
Jason Jungreis
Administrative Law Judge

Attachment 1

ATTACHMENT 1

PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF MARKET SENSITIVE DATA AND INFORMATION FROM THE DRAM EVALUATION

1. Scope. This Protective Order shall govern access to and the use in this proceeding of Protected Materials, used in or produced by the Demand Response Auction Mechanism (DRAM) Evaluation Report or produced by, or on behalf of, any Disclosing Party.
2. Modification. This Protective Order shall remain in effect until it is modified or terminated by the Commission or Assigned Administrative Law Judge (“Assigned ALJ”). The parties acknowledge that the identity of the parties submitting Protected Materials may differ from time to time. In light of this situation, the parties agree that modifications to this Protective Order may become necessary, and they further agree to work cooperatively to devise and implement such modifications in as timely a manner as possible. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Assigned ALJ or the Commission.
3. Definitions
 - a. The term “Protected Material(s)” means (i) trade secret, market sensitive, or other confidential and/or proprietary information as determined by the Commission in accordance with the provisions of D.06-06-066 and subsequent decisions, General Order 66-D and 454.5(g), or any other right of confidentiality provided by law, or (ii) any other materials that are made subject to this Protective Order by the Assigned ALJ, Law and Motion Administrative Law Judge (“Law and Motion ALJ”), Assigned Commissioner, the Commission, or any court or other body having appropriate authority. Protected Materials also includes memoranda, handwritten notes, spreadsheets, computer files and reports, and any other form of information (including information in electronic form) that copies, discloses, or compiles other Protected Materials or from which such materials may be derived (except that any derivative materials must be separately shown to be confidential). Protected Materials do not include: (i) any information or document contained in the public files of the CPUC or any other state or federal agency, or in any state or federal court; or (ii) any information that is public knowledge, or which becomes public knowledge, other than through

disclosure in violation of this Protective Order or any other protective order.

- i. For the purposes of this Protective Order, “Protected Materials” shall include any data, or documents referencing that data, used or considered in the preparation of the DRAM Evaluation Report, as prepared by Resource Innovations (formerly Nexant) or Updated Nexant Report, that was provided confidentially to Nexant for the purposes of preparing the DRAM Evaluation Report. This includes data and documents obtained from the California Independent System Operator (ISO) or third-party DRAM Sellers).
- b. The term “redacted” refers to situations in which Protected Materials in a document, whether the document is in paper or electronic form, have been covered, blocked out, or removed. The term “unredacted” refers to situations in which the Protected Materials in a document, whether in paper or electronic form, have not been covered, blocked out, or removed.
- c. The term “Disclosing Party” means a party who initially discloses or distributes any specified Protected Materials in this proceeding.
- d. The term “Market Participant” (“MP”) refers to a party that is:
 - i. A person or entity, or an employee of an entity, that engages in the wholesale purchase, sale or marketing of energy or capacity, or the bidding on or purchasing of power plants, or bidding on utility procurement solicitations, or consulting on such matters, subject to the limitations in 3) below.
 - ii. A trade association or similar organization, or an employee of such organization,
 1. whose primary focus in proceedings at the Commission is to advocate for persons/entities that purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations; or
 2. a majority of whose members purchase, sell or market energy or capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations;
 3. formed for the purpose of obtaining market sensitive information; or
 4. controlled or primarily funded by a person or entity whose primary purpose is to purchase, sell or market energy or

capacity at wholesale; bid on, own, or purchase power plants; or bid on utility procurement solicitations.

- e. An MP's Reviewing Representatives are limited to persons designated by the MP who meet the following criteria:
 - i. Are outside experts, consultants, or attorneys who are actively involved in the ongoing Demand Response proceeding (Application 22-05-002, et. al.);
 - ii. Are employees of the MP that would routinely prepare or analyze this data;
 - iii. In any such case, the number of Reviewing Representatives shall not exceed seven persons.
 - f. Persons or entities that do not meet the definition of MP are "Non-Market Participants" ("NMPs"), and may have access to market sensitive information through their designated Reviewing Representatives. An attorney or consultant that simultaneously represents MP(s) and NMP(s) may not have access to market sensitive data. If, on the other hand, simultaneous representation is of MP and NMP clients involved in completely different types of matters, there should be no bar (although there may be ethical implications of such representation that we do not address here). If, for example, an attorney represents an MP in matters unrelated to procurement, resource adequacy, RPS, or the wholesale purchase, sale or marketing of energy or capacity, or the bidding on or purchasing of power plants, or bidding on utility procurement solicitations, in a forum other than this Commission, and simultaneously represents an NMP in cases related to these topics before the Commission, there should be no bar to the attorney's receipt of market sensitive data (pursuant to a non-disclosure agreement and protective order) in the latter matter. In close cases, the balance should militate to bar simultaneous representation because of the risks it poses.
 - g. NMP Reviewing Representatives are required to execute a Non-Disclosure Agreement and are bound by the terms of this Protective Order.
4. Designation of Materials.

When filing or providing in discovery any documents containing Protected Materials, a party shall physically mark such documents on each page (or in the case of non-documentary materials such as computer diskettes, on each item) as "PROTECTED MATERIALS SUBJECT TO PROTECTIVE ORDER," or with words of similar import as long as one or more of the terms, "Protected Materials," "Protective Order," or "General Order No. 66-C" is

included in the designation to indicate that the materials in question are protected. On pages that contain a combination of market sensitive and non-market sensitive information, the market sensitive information should be clearly labeled or otherwise identified using a consistent indicator and the pages shall also be physically marked.

All materials so designated shall be treated as Protected Materials unless and until (a) the designation is withdrawn pursuant to Paragraph 17 hereof, or (b) an ALJ, Commissioner or other Commission representative makes a determination pursuant to Paragraph 4 hereof changing the designation.

All documents containing Protected Materials that are filed with the Commission or served shall follow all applicable processes for protecting confidential information. Hard copies shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are filed or served under seal pursuant to this Protective Order.

5. Redaction of Documents. Whenever a party files, serves or provides in discovery a document that includes Protected Materials (including but not limited to briefs, testimony, exhibits, and responses to data requests), such party shall also prepare a redacted version of such document. The redacted version shall enable persons familiar with this proceeding to determine with reasonable certainty the nature of the data that has been redacted and where the redactions occurred. The redacted version of a document to be filed shall be served on all persons on the service list, and the redacted version of a discovery document shall be served on all persons entitled thereto.
6. Selection of Reviewing Representatives. Each NMP selecting a Reviewing Representative shall first identify its proposed Reviewing Representative to all other parties and the Commission, by e-mailing the service list. An attorney or consultant that simultaneously represents MP(s) and NMP(s) may not have access to market sensitive data, subject to the exception in paragraph 3.F. Any designated Reviewing Representative has a duty to disclose any potential conflict that puts him/her in violation of Decision 06-12-030. A resume or curriculum vitae is reasonable disclosure of such potential conflicts, and should be the default evidence provided in most cases.
7. Access to Protected Materials and Use of Protected Materials. Subject to the terms of this Protective Order, Reviewing Representatives shall be entitled to access to Protected Materials, subject to the terms of the Administrative Law Judge Ruling this Protective Order is attached to. All other parties in this proceeding shall not be granted access to Protected Materials, but shall instead be limited to reviewing redacted versions of documents. Reviewing

Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials. Protected Materials obtained by a party in this proceeding may also be requested by that party in a subsequent Commission proceeding, subject to the terms of any protective order governing that subsequent proceeding, without constituting a violation of this order. Protected Materials may be introduced and referenced in this Proceeding, in the manner laid out in the Administrative Law Judge Ruling this Protective Order is attached to or by subsequent ruling.

8. Maintaining Confidentiality of Protected Materials. Each Reviewing Representative shall treat Protected Materials as confidential in accordance with this Protective Order and the Non-Disclosure Agreement executed pursuant to Paragraph 7 and 8 hereof. Protected Materials shall not be used except as necessary for the conduct of this proceeding, and shall not be disclosed in any manner to any person except (i) Reviewing Representatives who have executed Non-Disclosure Agreements; (ii) Reviewing Representatives' paralegal employees and administrative personnel, such as clerks, secretaries, and word processors, to the extent necessary to assist the Reviewing Representatives, provided that they shall first ensure that such personnel are familiar with the terms of this Protective Order, and have signed a Non-Disclosure Agreement, (iii) persons employed by or working on behalf of the CEC, or other state governmental agencies covered by Paragraph 12. Reviewing Representatives shall adopt suitable measures to maintain the confidentiality of Protected Materials they have obtained pursuant to this Protective Order, and shall treat such Protected Materials in the same manner as they treat their own most highly confidential information. Reviewing Representatives shall be liable for any unauthorized disclosure or use by their paralegal employees or administrative staff. In the event any Reviewing Representative is requested or required by applicable laws or regulations, or in the course of administrative or judicial proceedings (in response to oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any of Protected Materials, the Reviewing Representative shall oppose disclosure on the grounds that the requested information has already been designated by the Commission as Protected Materials subject to this Protective Order lawfully issued by the Commission and therefore may not be disclosed. The Reviewing Representative shall also immediately inform the Disclosing Party of the request, and the Disclosing Party may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and the Reviewing Representative shall cooperate in good faith

with such party either to oppose the disclosure of the Protected Materials consistent with applicable law, or to obtain confidential treatment of them by the person or entity who wishes to receive them prior to any such disclosure. If there are multiple requests for substantially similar Protected Materials in the same case or proceeding where a Reviewing Representative has been ordered to produce certain specific Protected Materials, the Reviewing Representative may, upon request for substantially similar materials by another person or entity, respond in a manner consistent with that order to those substantially similar requests.

9. Exception for California Independent System Operator (ISO).

Notwithstanding any other provision of this Protective Order, with respect to an ISO Reviewing Representative only, participation in the ISO's operation of the ISO-controlled grid and in its administration of the ISO-administered markets, including, but not limited to, markets for ancillary services, supplemental energy, congestion management, and local area reliability services, shall not be deemed to be a violation of this Protective Order.

10. Non-Disclosure Agreements. A Reviewing Representative shall not inspect, participate in discussions regarding, or otherwise be granted access to, Protected Materials unless and until he or she has first completed and executed a Non-Disclosure Agreement, attached hereto as Attachment 2, and delivered the original, signed Non-Disclosure Agreement to the Commission and to the Disclosing Party, if applicable. The Disclosing Party shall retain the executed Non-Disclosure Agreement pertaining to the Protected Materials it has disclosed.

11. Return or Destruction of Protected Materials. Protected Materials shall remain available to Reviewing Representatives until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Reviewing Representatives shall, within fifteen days of such request, return the Protected Materials (including Notes of Protected Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Material may be retained, if they are maintained in accordance with Paragraph 8. Within such time period each Reviewing Representative, if requested to do so, shall also submit to the Disclosing Party an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with

Paragraph 8. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order and CPUC General Order No. 66-D. In the event that a Reviewing Representative to whom Protected Material are disclosed ceases to be engaged to provide services in this proceeding, then access to such materials by that person shall be terminated. Even if no longer engaged in this proceeding, every such person shall continue to be bound by the provisions of this Protective Order and the Non-Disclosure Agreement.

12. Access and Use by Governmental Entities.

- a. In the event the CPUC receives a request from the CEC for a copy of or access to any party's Protected Materials, the procedure for handling such requests shall be as follows. Not less than five (5) days after delivering written notice to the Disclosing Party of the request, the CPUC shall release such Protected Materials to the CEC upon receipt from the CEC of an Interagency Information Request and Confidentiality Agreement ("Interagency Confidentiality Agreement"). Such Interagency Confidentiality Agreement shall (i) provide that the CEC will treat the requested Protected Materials as confidential in accordance with this Protective Order, (ii) include an explanation of the purpose for the CEC's request, as well as an explanation of how the request relates to furtherance of the CEC's functions, (iii) be signed by a person authorized to bind the CEC contractually, and (iv) expressly state that furnishing of the requested Protected Materials to employees or representatives of the CEC does not, by itself, make such Protected Materials public. In addition, the Interagency Confidentiality Agreement shall include an express acknowledgment of the CPUC's sole authority (subject to judicial review) to make the determination whether the Protected Materials should remain confidential or be disclosed to the public, notwithstanding any provision to the contrary in the statutes or regulations applicable to the CEC.
- b. In the event the CPUC receives a request for a copy of or access to a party's Protected Materials from a state governmental agency other than the CEC that is authorized to enter into a written agreement sufficient to satisfy the requirements for maintaining confidentiality set forth in Government Code Section 6254.5(e), the CPUC may, not less than five (5) days after giving written notice to the Disclosing Party of the request, release such protected material to the requesting governmental agency, upon receiving from the requesting agency an executed Interagency Confidentiality Agreement that contains the same provisions described in Paragraph 12(a) above.

- c. The CEC may use Protected Materials when needed to fulfill its statutory responsibilities or cooperative agreements with the CPUC. Commission confidentiality designations will be maintained by the CEC in making such assessments, and the CEC will not publish any assessment that directly reveals the data or allows the data submitted by an individual load serving entity (“LSE”) to be “reverse engineered.”
- 13. Dispute Resolution.** All disputes that arise under this Protective Order, including but not limited to alleged violations of this Protective Order and disputes concerning whether materials were properly designated as Protected Materials, shall first meet and confer in an attempt to resolve such disputes. If the meet and confer process is unsuccessful, the involved parties may present the dispute for resolution to the Assigned ALJ or the Law and Motion ALJ.
- 14. Other Objections to Use or Disclosure.** Nothing in this Protective Order shall be construed as limiting the right of a party, the Commission Staff, or a state governmental agency covered by Paragraph 12 from objecting to the use or disclosure of Protected Material on any legal ground, such as relevance or privilege.
- 15. Remedies.** Any violation of this Protective Order shall constitute a violation of an order of the CPUC. Notwithstanding the foregoing, the parties and Commission Staff reserve their rights to pursue any legal or equitable remedies that may be available in the event of an actual or anticipated disclosure of Protected Materials.
- 16. Withdrawal of Designation.** A Disclosing Party may agree at any time to remove the “Protected Materials” designation from any materials of such party if, in its opinion, confidentiality protection is no longer required. In such a case, the Disclosing Party will notify all other parties that the Disclosing Party believes are in possession of such materials of the change of designation.
- 17. Interpretation.** Titles are for convenience only and may not be used to restrict the scope of this Protective Order.

Attachment 2

**NON-DISCLOSURE AGREEMENT FOR INDIVIDUAL EMPLOYEE TO BE
BOUND BY PROTECTIVE ORDER TO MAINTAIN CONFIDENTIALITY OF
RECORDS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION**

The undersigned, _____ (print or type name, including middle initial) employed by _____ acknowledges that he or she has received a copy of the [DATE] Protective Order issued in Application 22-05-002, et. al. The undersigned hereby acknowledges that the undersigned has read the Protective Order and understands the importance of maintaining the confidentiality of Protected Materials and data (as defined in the Protective Order), the provisions of the Protective Order relating to such confidentiality, and the limitations on the use of the information and data. In consideration thereof, the undersigned agrees to be bound by all provisions of this Non-Disclosure Agreement.

Signature:	_____
Print Name:	_____
Title:	_____
Phone:	_____
Email:	_____
Date signed:	_____