

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



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

Application No. 22-05-002

And Related Matters.

Application 22-05-003

Application 22-05-004

**OPENING COMMENTS OF CLEAN ENERGY ALLIANCE, SAN DIEGO
COMMUNITY POWER AND MISSION:DATA COALITION, INC ON THE PROPOSED
DECISION DENYING THE PETITION FOR MODIFICATION OF D.22-12-009**

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DENYING THE PETITION FOR MODIFICATION OF D.22-12-009**

In accordance with Rule 14.3 of the California Public Utilities Commission (“Commission” or “CPUC”) Rules of Practice and Procedure, Clean Energy Alliance (“CEA”), San Diego Community Power (“SDCP”) and Mission:data Coalition, Inc (“Mission:data” and, collectively, “Petitioners”) hereby file these Opening Comments to Administrative Law Judge Toy’s proposed *Decision Denying Petition for Modification of Decision 22-12-009* dated August 18, 2025 (“Proposed Decision”).

The Proposed Decision would have the effect of reversing Commission precedent in place since 2009 without notice, an opportunity for stakeholders to be heard or an administrative record. This would violate the requirements of legal due process as well as the Public Utilities Code, and would approve an improper collateral attack on prior Commission orders. The Proposed Decision would condone a regulated utility taking action contrary to commitments made in its testimony to the Commission, on which the Commission relied. The Proposed Decision also makes several factual errors that do not reflect the record. This Proposed Decision should alarm the Commission and the community of stakeholders impacted by its decisions, and must be substantially revised to approve the Petition for Modification.

I. Background and Summary of Comments

As the Petitioners set forth in their February 19, 2025 *Petition for Modification of Decision 22-12-009* (“PFM”), since 2009 the Commission has required the large Investor-Owned Utilities (“IOU”) to provide customers with access to their energy usage data on a real-time (or near real-time) basis via direct transmission from the customer’s Smart Meter to their home or business, to be

received by the Home Area Network (“HAN”) device of the customer’s choosing.¹ The policy bases for this data access requirement included supporting dynamic pricing, load shifting, reliability, conservation, demand response (“DR”) and affordability.² In requiring “real-time” data, the Commission expressly distinguished direct data transmissions from Smart Meters to customers’ HAN devices, which are delivered within a few seconds of the energy usage, from the usage data provided by the three large IOUs at the time, which was delayed by one day.³ In fact, the Commission’s approval of ratepayer funding for the IOUs’ deployment of Smart Meters was “*predicated*” in part on the benefits ratepayers would receive by “leveraging the near real-time usage monitoring and event signaling enabled by their Smart Meter HAN function to drive demand reduction via energy conservation, demand response and automated load control capabilities.”⁴ These “Real Time Usage Data Access Orders” remain good law today.⁵

Currently, the only way for San Diego Gas & Electric Company (“SDG&E”) customers to obtain this real-time meter data is via “ZigBee,” a type of radio enabled in Itron Smart Meters “1.0” currently installed throughout SDG&E’s territory. To Petitioners’ knowledge, Pacific Gas & Electric Company (“PG&E”) and Southern California Edison Company (“SCE”) are currently providing via ZigBee the legally-required real-time data access to their customers.⁶

In Application 22-05-003, SDG&E “notified” the Commission of its “intent to discontinue its support of demand response and/or other devices that connect to SDG&E’s Smart Meters via ZigBee technology.”⁷ SDG&E argued the DR and meter market was moving away from ZigBee to WiFi-based transmission of such data. SDG&E’s testimony included its intention to make new WiFi-

¹ PFM at 13-16 (citing D.09-12-046, *Decision Adopting Policies and Findings Pursuant to the Smart Grid Policies Established by the Energy Information and Security Act of 2007* (Dec. 17, 2009) at 65, Conclusion of Law (“COL”) 18, Ordering Paragraph (“OP”) 4; D.11-07-056, *Decision Adopting Rules to Protect the Privacy and Security of the Electricity Usage Data of the Customers of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company* (Jul. 28, 2011) at 115-117, OP 11; Resolution E-4527 (Sep. 27, 2012) at 2, OP 1(a) (collectively, the “Real Time Usage Data Access Orders”); *see also* PFM at 16 (citing D.13-05-010 at 488; D.14-12-004 at 5, 8; Resolution E-4820 at 20, 22, OP 1(a)).

² PFM at 12-13 (citing D.09-12-046 at 52); *id.* at 15-19 (citing Resolution E-4527 at 3-6, FOF 2).

³ PFM at 14 (citing D.11-07-056 at 107); Reply (Apr. 1, 2025) at 16 (citing D.11-07-056 at 107).

⁴ PFM at 18 (citing Resolution E-4527 at 5-6) (emphasis added).

⁵ PFM at 15.

⁶ *Id.* at 4 (citing Murray PFM Declaration at C-7 to C-8). The Murray PFM Declaration provides that SCE announced plans in 2019 to disconnect HAN devices from their Smart Meters. Mission:data contacted the Commission and raised SCE’s requirements under the Real Time Usage Data Access Orders. SCE then reversed its position and continues to support ZigBee connections. Murray PFM Declaration at ¶ 24.

⁷ SDGE-1A, *Prepared Direct Testimony of E Bradford Mantz* (May 2, 2022) at EBM 18:5-7.

based Smart Meters 2.0 available in its territory possibly in late 2023.⁸ SDG&E committed in its testimony that “**devices that are connected via ZigBee will still remain connected until the customers’ future new meters are replaced with a new meter not carrying ZigBee.**”⁹ SDG&E’s testimony did not identify any condition in which this statement would not apply.

In its Application, SDG&E did *not* notify the Commission or stakeholders that it would cease providing real-time (or near real-time) energy usage data access for its customers directly from the Smart Meter to the HAN device of the customer’s choosing. SDG&E did *not* put the Commission or stakeholders on notice that, until all SDG&E Smart Meters are replaced with upgraded meters (Smart Meters “2.0”) that provide such access via WiFi, the utility would be out of compliance with the Commission’s Real Time Usage Data Access Orders. To the contrary, SDG&E’s testimony stated existing customers with ZigBee-based HAN connections would still remain connected until their meters were replaced with meters not utilizing ZigBee.¹⁰

In ruling on SDG&E’s Application, D.22-12-009 noted SDG&E’s description of the shift in market interest from ZigBee to WiFi “*as well as [SDG&E’s] plans to solicit for new smart meters in the near future.*”¹¹ The Decision stated that SDG&E would “end new ZigBee device connections in 2023, with plans to educate customers regarding their ZigBee devices *when their smart meters are replaced, which will end ZigBee device functionality.*”¹² The Decision thereby clearly relied on SDG&E’s plans to replace its Smart Meters with WiFi, as well as SDG&E’s testimony committing to keep existing customers connected via ZigBee until their meters were replaced. The Decision reasoned that, given the shift to WiFi-based transmission of meter data and a lack of vendors supporting ZigBee, it was reasonable to end “funding for ZigBee support as proposed by SDG&E” and “to discontinue ZigBee technology support for SDG&E.”¹³ The Decision never cited the Real Time Usage Data Access Orders nor discussed the impact of SDG&E’s proposal on compliance with such precedent. D.22-12-009 failed to address the fact that, until SDG&E customers’ meters are upgraded to meters that provide real-time energy usage data directly to customers’ via WiFi, the only way such data can be transmitted is via ZigBee.

⁸ *Id.* at EBM 19:17-19.

⁹ *Id.* at EBM 19:25 – EBM 20:1 (emphasis added).

¹⁰ *Id.*

¹¹ D.22-12-009 at 28 (emphasis added) (citing SDG&E-1A, at 19:15-20:19).

¹² D.22-12-009 at 28-29 (emphasis added).

¹³ *Id.* at 29, COL 23.

In SDG&E territory, when customers’ existing ZigBee-based Smart Meter connections fail or become disconnected (which can occur due to HAN device or SDG&E meter issues), SDG&E has now stopped reconnecting them.¹⁴ SDG&E also stopped honoring new customer requests to activate the HAN function of their Smart Meter via ZigBee connections.¹⁵ Petitioners raised this with the Energy Division and SDG&E, but the issue remains unresolved.¹⁶ SDG&E confirmed its behavior in 2024, but declined to reinstate real-time energy usage data access for its customers, expressly relying on D.22-12-009.¹⁷ In December of 2024, the Commission denied SDG&E’s Smart Meter 2.0 project as insufficiently justified, and required SDG&E to file a new application for such territory-wide meter upgrade.¹⁸ This 2024 action had the effect of delaying WiFi-based Smart Meter deployment in SDG&E territory for several more years to come.¹⁹

In February of 2025, the Petitioners filed this PFM, arguing that new information, facts and circumstances had come to light more than one year since issuance of D.22-12-009 warranting its modification: that (1) SDG&E is refusing to reconnect its customers’ HAN devices to Smart Meters via ZigBee in reliance on D.22-12-009, despite its testimony to the contrary; (2) this is having real, adverse consequences for customers and frustrating the Commission’s reliability policies in SDG&E territory, including the suspension of load flexibility offerings in commercial buildings in the last year and the cessation of DR product development and sales efforts; and (3) the “near term” rollout of Smart Meters that can provide real-time usage data via WiFi has been delayed by numerous years as a result of D.24-12-074.²⁰ The PFM requested modest modifications to D.22-12-009 to clarify that SDG&E remains required to comply with the Real Time Usage Data Access Orders, and until customers’ Smart Meters 1.0 are replaced with meters that provide real-time energy usage data to customers via WiFi, SDG&E must reconnect existing ZigBee-based connections, and honor customer requests for new ZigBee-based connections.²¹ Per Rule 16.4(b), the proposed revisions to D.22-12-009 were set forth in Exhibit D to the PFM.

¹⁴ PFM at 8-9 (citing Declaration of Michael Murray, attached to PFM as **Exhibit C** (“Murray PFM Declaration”) at C-4 to C-6, Appendix 1).

¹⁵ PFM at 9 (citing Murray PFM Declaration at C-5, C-6).

¹⁶ PFM at 11 (citing Murray PFM Declaration at C-5 to C-7).

¹⁷ PFM at 11; Murray PFM Declaration at ¶¶ 17, 22.

¹⁸ PFM at 25-27 (citing D.24-12-074 at 676, COL 215).

¹⁹ PFM at 3-4, 7; Murray PFM Declaration at ¶ 21.

²⁰ PFM at 8-10 (citing Murray PFM Declaration at C-4 to C-7); *id.* at 24-26.

²¹ *Id.* at 29.

Petitioners' PFM was supported by the California Efficiency + Demand Management Council ("Council"), which demonstrated the incongruity between the consequences of D.22-12-009 eliminating real-time energy usage data access for SDG&E customers and California's policy goals in favor of real-time rates (such as the California Energy Commission's Load Management Standards) and enabling load shift.²² The Council argued that the Commission could not have intended such a result, and the Decision should be modified so as not to negate the Real Time Usage Data Access Orders.²³ SDG&E also filed a Response, arguing that D.22-12-009's determination to allow SDG&E to terminate ZigBee service was not expressly "conditioned" on SDG&E's plans to transition to WiFi-based Smart Meters in 2023.²⁴ SDG&E also argued that, even if the rejection of Smart Meter 2.0 in D.24-12-074 did constitute a new fact warranting the PFM, it was "neither feasible nor practical" for the utility to provide real-time energy usage data access to its customers via ZigBee because SDG&E's vendor had stopped providing support and SDG&E had not designated staff to support ZigBee connectivity.²⁵

In their Reply, Petitioners further explained the relevance of the new facts and circumstances, as well as a misconception of law and fact engendered by the inconsistency between SDG&E's testimony and its actions, justifying the filing of the PFM.²⁶ The Reply refuted SDG&E's claim that it was infeasible for the utility to provide the required customer data access with new evidence that SDG&E's existing software allows SDG&E to reconnect ZigBee connections and make new ones, in the absence of a third-party vendor.²⁷ Petitioners also provided evidence demonstrating that third party vendors do, in fact, support ZigBee connections for other large IOUs with Itron Smart Meters today, contrary to SDG&E's assertion about "infeasibility."²⁸

Now, ALJ Toy's Proposed Decision would summarily deny the PFM on the ground that Petitioners did not sufficiently justify filing the PFM more than one year after D.22-12-009 was issued. The Proposed Decision wholly adopts SDG&E's position that the Decision was not based on the utility's plans to transition to WiFi-based meters, concluding that the Commission's decision in December of 2024 to deny Smart Meter 2.0 did not constitute a new fact or circumstance

²² California Efficiency + Demand Management Council Response to PFM (Mar. 21, 2025) at 2-3.

²³ *Id.* at 2-3.

²⁴ SDG&E Response to PFM (Mar. 21, 2025) ("SDG&E Response") at 3.

²⁵ *Id.* at 4-5.

²⁶ Petitioners' Reply to Responses to PFM (Apr. 1, 2025) ("Reply").

²⁷ *Id.* at 13 (citing Murray Reply Declaration at ¶¶ 7, 8, 16).

²⁸ Reply at 14 (citing Murray Reply Declaration at ¶¶ 12-14, Appendix 1).

justifying the timing of the PFM. The Proposed Decision also concludes that even if the PFM had been filed within one year of D.22-12-009, it would not grant the relief, arguing that SDG&E's provision of "Green Button" or data on its website complies with the Real Time Usage Data Access Orders. These comments identify major errors in the Proposed Decision:

- 1) The Proposed Decision erroneously concludes that Petitioners failed to justify filing the PFM more than one year after the issuance of D.22-12-009, applying Rule 16.4(d) in an arbitrary and unreasonably stringent manner, inconsistent with prior Commission decisions.
- 2) The Proposed Decision's interpretation of D.22-12-009 would result in the reversal of Commission precedent requiring customer access to real-time energy usage data applicable to all three IOUs via approval of SDG&E's budget line item, violating due process obligations, statutory requirements and prohibitions on collateral attacks on prior decisions.
- 3) The Proposed Decision ignores and condones SDG&E's failure to carry out its commitment in testimony to keep customers with existing ZigBee-based data access connected to such data until their Smart Meters are replaced and the adverse impacts of SDG&E's ZigBee termination in the past year, setting an intolerable precedent that regulated utilities can mislead the Commission without consequences.
- 4) The Proposed Decision erroneously conflates real-time energy usage data provided directly from the customer's meter to the customer's device inside their premises within 5-7 seconds with data provided 2-3 days in arrears on a utility's website or to the community choice aggregators ("CCAs"), disregarding Commission precedent to the contrary and the record to this PFM.

These are significant flaws that would themselves violate applicable law and set extremely dangerous precedent for the utilities, their customers and a wide array of stakeholders impacted by Commission decisions more broadly. The Proposed Decision should be substantially revised, and the Commission should instead approve the PFM.

II. The Proposed Decision Commits Significant and Troubling Errors of Law and Fact in Finding that Petitioners Did Not Adequately Justify Filing the PFM More than One Year after D.22-12-009 Was Issued.

The Proposed Decision embraces SDG&E's argument that the Commission did not base its decision in D.22-12-009 to permit SDG&E to discontinue funding for ZigBee support on near-term replacement of SDG&E's meters with WiFi-compatible "Smart Meters 2.0," and thus the Commission's late 2024 rejection of SDG&E's Smart Meter 2.0 proposal was not a new fact or new

information justifying the timing of the PFM.²⁹ The Proposed Decision gets this wrong on several levels. First, the Proposed Decision applies an arbitrary and unreasonably stringent standard of review of whether Petitioners justified filing the PFM more than one year after D.22-12-009. In addition to failing to recognize the language in D.22-12-009 referencing “near term” replacement of SDG&E’s Smart Meters that are WiFi-based, the Proposed Decision implies that, in D.22-12-009, the Commission knowingly allowed SDG&E to terminate Commission-ordered real-time energy usage data access, without even mentioning the Real Time Usage Data Access Orders or stating that it was reversing them. In so doing, the Proposed Decision would stand for the proposition that it is perfectly fine for the Commission to reverse more than a decade of its own precedent applicable to all three large IOUs via approval of a budget line-item in an application of one IOU, without so much as citing such precedent. This flies in the face of foundational due process and administrative law requirements for state agencies.

The Proposed Decision also ignores the new information presented in the PFM that SDG&E is failing to reconnect existing customer ZigBee connections that become disconnected, although none of such customers’ meters have been replaced with meters that provide real-time energy usage data access via WiFi, directly counter to SDG&E’s testimony. Petitioners showed with new evidence that this behavior resulted in the suspension of load flexibility offerings in SDG&E territory in the past year. The Proposed Decision would set extremely dangerous precedent that a utility may mislead the Commission and stakeholders and violate and collaterally attack Commission orders. The Commission should not let this stand and should instead approve a substantially revised or alternate decision approving the PFM.

A. The Proposed Decision applies an arbitrary and unreasonably stringent standard of review under Rule 16.4(d).

Rule 16.4(d) merely requires that a petition for modification “explain why the petition could not have been presented within one year of the effective date of the decision” and that the late submission be “justified.” Here, Petitioners explained that the PFM could not have been presented within 1 year because new facts and circumstances, and a misconception of law and fact came to

²⁹ Proposed Decision at 9-11; *see also id.*, FOF 4, COL 1. The Proposed Decision states that it would also deny the PFM on substantive grounds because “the denial of SDG&E smart meter 2.0 program in D.24-12-074 is not a new fact or circumstance that justifies the relief requested by Petitioners.” *Id.* at 12. This section of Petitioners’ comments points out the errors in this analysis that apply to both the Rule 16.4(d) finding and the Commission’s standard of review of a Petition for Modification more generally.

light more than 1 year after the decision: (1) SDG&E is not reconnecting existing ZigBee customers when they become disconnected, counter to SDG&E's testimony; (2) this resulted in the cancellation of DR products and business development in SDG&E's territory more than 1 year after D.22-12-009 with adverse consequences for California's load flexibility policies; (3) D.24-12-074 denied SDG&E's Smart Meter 2.0 project, causing years of delay in the transition to Smart Meters that can provide real-time energy usage data access to customers via WiFi; and (4) Petitioners attempted to work with the Energy Division and SDG&E to resolve this problem without the expense and Commission resources involved in a PFM, but it did not become apparent that a PFM was necessary until 2024.³⁰ The Proposed Decision's summary denial of the PFM based on Rule 16.4(d) is inconsistent with and far more stringent than the Commission's application of this rule in many other decisions granting petitions for modification. The Commission has granted numerous PFMs filed far later than this one.³¹ Its application is arbitrary and unreasonable and should be modified.

B. By finding that D.22-12-009 was not based on SDG&E's near-term rollout of WiFi-compatible meters, the Proposed Decision commits serious legal error by reversing over a decade of Commission precedent without notice, an opportunity for stakeholders to be heard or an adequate record.

The Proposed Decision concludes that D.22-12-009 "based its decision to approve ending ZigBee support on the meter market and not whether new smart meters would replace existing meters."³² Rather than reading D.22-12-009 in the light most favorable to the Commission, i.e. that it allowed SDG&E to discontinue funding ZigBee support because SDG&E planned to replace of ZigBee-based Smart Meters with WiFi-based Smart Meters in the "near term," the Proposed Decision goes in the opposite direction, reasoning:

the possible denial of SDG&E's Smart Meter 2.0 application is an outcome that could have been considered at the time of the D.22-12-009, and the decision did not condition the end of ZigBee funding on the outcome of SDG&E's request. Further, D.22-12-009 explicitly stated that SDG&E will end new ZigBee device connections in 2023. [] As the Petition notes, ZigBee/HAN device disconnections can sometimes occur due to various, unknown issues with the customer's HAN device or the SDG&E meter.[] It is reasonable to conclude that ZigBee/HAN device disconnections could occur at any time after ZigBee support ends.³³

³⁰ PFM at 11 (citing Murray PFM Declaration at C-5, C-7).

³¹ See, e.g., D.23-02-004 (granting petition to modify D.11-09-015 *more than 11 years after the subject decision*, simply because the petitioner's generators did not exist at the time of the original decision); D.15-12-039 (granting petition to modify a rate *more than 10 years* after the original decision).

³² Proposed Decision at 9.

³³ Proposed Decision at 10 (citations omitted).

The implication of this interpretation is that the Commission knew that it was permitting SDG&E to stop complying with the Real Time Usage Data Access Orders, and did so without so much as citing such prior precedent or grappling with the implications of such reversal. Such a conclusion would constitute grave legal error.

Bedrock principles of Constitutional due process require state agencies to provide adequate notice of their proposed actions and an opportunity for stakeholders to be heard.³⁴ In addition, it is fundamental that the Commission's decisions must be rendered based on law and substantial evidence in the administrative record. These principles are embedded not just in our Constitution and caselaw, but also in statute.³⁵ As the Proposed Decision itself quotes, Public Utilities Code §1708 provides that the Commission may only

“rescind, alter, or amend any order or decision made by it” after providing proper notice to the parties and an opportunity to be heard. By its very nature, the Commission's authority under Section 1708 is an extraordinary remedy. It must be exercised with care, justified by extraordinary circumstances, and remain consistent with the fundamental principles of *res judicata* because “Section 1708 represents a departure from the standard that settled expectations should be allowed to stand undisturbed.”³⁶

Ironically, the Proposed Decision then takes such “extraordinary” action by reversing the Real Time Usage Data Access Orders, but without justification, proper notice or an opportunity for stakeholders to be heard. The Proposed Decision applies §1708 in the wrong direction, reversing Commission precedent in the absence of due process or a record, rather than modifying D.22-12-009 to *prevent* such violations.

In addition to breaching foundational Constitutional principles and California law, reversing the Real Time Usage Data Access Orders through SDG&E's DR funding application line item constitutes an impermissible collateral attack on a prior Commission decision under other Commission precedent.³⁷ A single IOU's budget application line item should not become a backdoor mechanism to reverse substantive regulatory requirements grounded in federal and state statute,³⁸

³⁴ See, e.g., *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 314 (1950); *People v. Western Air Lines, Inc.*, 42 Cal.2d 621, 632 (1954).

³⁵ See, e.g., Pub. Util. Code §§ 1701.1(e)(8), 1757(a)(4).

³⁶ Proposed Decision at 6-7 (citations omitted).

³⁷ See Pub. Util. Code § 1709 (“In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.”); see, e.g., D.22-06-005 FOF 3, COL 1 (barring a collateral attack on a prior Commission decision).

³⁸ PFM at 11-12 (describing federal and state law on which the CPUC based this precedent).

state policy³⁹ and a fully-developed record.⁴⁰ If approved, this Proposed Decision could set an appalling and legally-flawed precedent that could result in further collateral attacks on customer protections, utility safety requirements and a wide variety of utility requirements often implemented by third party vendors, the costs of which are approved in application proceedings.

Without SDG&E or D.22-12-009 so much as citing the Real Time Usage Data Access Orders, stakeholders had no notice that they were being reversed. It is undisputed that neither SDG&E nor the Commission in D.22-12-009 ever acknowledged or addressed the longstanding legal requirement for the large IOUs to provide real time energy usage data access directly from the customer's meter to the HAN device of the customer's choosing. As a result, customers, DR and energy efficiency providers and Petitioners did not have an opportunity to comment on the importance of such access and why it should be preserved. In fact, SDG&E's application testimony was misleading: SDG&E did *not* replace its ZigBee-based Smart Meters 1.0 with new WiFi-based Smart Meters beginning in 2023; SDG&E did *not* retain existing ZigBee-based connections until customers' meters were replaced with meters not containing ZigBee.

As demonstrated in Petitioners' Reply, there is no "extraordinary" circumstance justifying such reversal of precedent. SDG&E can activate and reconnect ZigBee-based data access with software it already owns, without a third-party vendor, as other large utilities do.⁴¹ Moreover, there are vendors currently servicing ZigBee in another major investor-owned utility territory.⁴²

By concluding that D.22-12-009 was not based on the near-term replacement of SDG&E's fleet of Smart Meters with WiFi-based usage data access, the Proposed Decision interprets the Decision as a reversal of Commission precedent in violation of fundamental administrative law. This reading enables such legal violation and constitutes serious legal error. The Commission must instead read D.22-12-009 as intending to enable a seamless transition in the provision of real-time energy usage data access from ZigBee to WiFi, *once WiFi-based meters are installed*. By making the clarifying revisions to D.22-12-009 set forth in Exhibit D to the PFM, the Commission can correct this significant error.

³⁹ *Id.* (discussing the policy underpinnings of the Real Time Usage Data Access Orders).

⁴⁰ *Id.* at 13-16 (describing the CPUC's reasoning in establishing the Real Time Usage Data Access Orders and re-affirmations of this requirement in D.14-12-004 at 5, 8; Resolution E-4820 at 20, 22, FOF 3, OP 1(a)).

⁴¹ Reply at 13 (citing Murray Reply Declaration at ¶¶ 7, 8, 16).

⁴² Reply at 14 (citing Murray Reply Declaration at ¶¶ 12-14, Attachment A).

C. The Proposed Decision ignores that SDG&E's failure to reconnect existing ZigBee customers – contrary to its testimony – and the impact of such failure in SDG&E territory was new information, thereby justifying the PFM.

The Proposed Decision incorrectly reasons that SDG&E's failure to reconnect existing customers whose ZigBee-based connections became disconnected does not constitute a new fact or circumstance justifying the timing of the PFM, stating:

As the Petition notes, ZigBee/HAN device disconnections can sometimes occur due to various, unknown issues with the customer's HAN device or the SDG&E meter.[] It is reasonable to conclude that ZigBee/HAN device disconnections could occur at any time after ZigBee support ends.⁴³

In so doing, the Proposed Decision erroneously fails to incorporate both SDG&E's testimony that it would stop supporting ZigBee for existing users only *once their meters were replaced* and D.22-12-009's reliance on this testimony. The Proposed Decision would condone a utility's contravention of its own testimony relied upon by its regulator. This is an extremely problematic and legally flawed line of reasoning that must be revised.

In issuing D.22-12-009, neither the Commission nor stakeholders knew that SDG&E would not reconnect existing HAN customers that became disconnected. In stark contrast, in fact, SDG&E expressly testified that "devices that are connected via ZigBee will still remain connected until the customers' future new meters are replaced with a new meter not carrying ZigBee."⁴⁴ As noted above, the Commission relied on this testimony, noting in its discussion that SDG&E planned to "educate customers regarding their ZigBee devices *when their smart meters are replaced, which will end ZigBee device functionality*."⁴⁵ Per D.22-12-009, ZigBee device functionality would only end once the customers' Smart Meters were replaced.

Thus, SDG&E's termination of ZigBee connections, a reversal from its testimony, is a new, material fact. SDG&E's actions have caused the suspension and cessation of load flexibility project development in SDG&E's territory more than one year after D.22-12-009 was issued.⁴⁶ The Proposed Decision errs in summarily denying the PFM on the ground that Petitioners failed to justify the filing more than one year after the Decision issued pursuant to Rule 16.4(d). The Proposed Decision also errs as a matter of fact by failing to acknowledge SDG&E's testimony committing to

⁴³ Proposed Decision at 10 (citations omitted).

⁴⁴ SDG&E 1A at EBM 19:25 – EBM 20:1 (emphasis added).

⁴⁵ D.22-12-009 at 28-29 (emphasis added).

⁴⁶ PFM at 9-10 (citing Murray PFM Declaration at C-6 to C-7).

maintain existing ZigBee connections and the utility's failure to uphold its commitment. The Proposed Decision thus sanctions a deceptive and untrue claim by SDG&E. The Proposed Decision also errs as a matter of law by setting precedent that a utility can commit to action in testimony, have the Commission approve its application, and then fail to carry out its commitment without consequence. The Commission must walk this back.

D. The Proposed Decision errs by failing to recognize language in D.22-12-009 demonstrating that the “near term” transition to WiFi-based meter data access undergirded approval of the termination of funding for ZigBee service.

D.22-12-009 clearly cited “customer shifts to wireless internet (WiFi) device communications as well as plans to solicit for new smart meters in the near future.”⁴⁷ The Decision referenced SDG&E replacement of Smart Meters and noted that *this replacement* would “end ZigBee device functionality.”⁴⁸ D.22-12-009 cited the “move towards WiFi” as a basis for approving the termination of ZigBee support.⁴⁹ The Decision also found that “SDG&E *new smart meter customers* will not be utilizing ZigBee Technology.”⁵⁰ The transition from ZigBee-based usage data access to WiFi-based usage data access permeated D.22-12-009 and its sections permitting the termination of funding for ZigBee service. But, until the actual replacement of ZigBee-based Smart Meters with WiFi-based Smart Meters, SDG&E customers *cannot* “shift” or “move” to WiFi. Itron Smart Meters 1.0 lack a WiFi radio.⁵¹ The Real Time Usage Data Access Orders never sanctioned discontinuity in such access at all, let alone for multiple years. It is therefore unreasonable for the Proposed Decision to find that the delay in SDG&E's deployment of WiFi-based Smart Meters caused by D.24-12-074 does not constitute a new fact or circumstance justifying the filing of the PFM more than one year after the issuance of D.22-12-009.

In sum, the PFM more than sufficiently justified its timing, and the Proposed Decision must be substantially revised to grant the relief sought by Petitioners.

III. The Proposed Decision Compounds Its Errors by Suggesting that SDG&E's Website or Green Button Data is Equivalent to Real-Time Energy Usage Data Transmitted from the Customer's Smart Meter Directly to their Home Area Network Device.

The Proposed Decision further supports its denial of the PFM on the ground that “it is not

⁴⁷ D.22-12-009 at 28.

⁴⁸ *Id.* at 29.

⁴⁹ *Id.*

⁵⁰ *Id.*, FOF 14 (emphasis added).

⁵¹ PFM at 10 (citing Murray PFM Declaration at C-2, C-6).

clear that SDG&E is providing customer energy usage data in an untimely manner.”⁵² The Proposed Decision reasons that the Real Time Usage Data Access Orders “do not clearly identify ‘real-time’ or ‘near real-time’ in terms of data latency, and customers have access to their energy use data via Green Button or the customer’s own account on SDG&E’s website.”⁵³ The citations selected by the Proposed Decision are not pertinent,⁵⁴ and its reasoning is based on gross factual errors and a misreading of Commission precedent.

The Commission’s Real Time Usage Data Access Orders are unmistakable that the 2-3 day-old data SDG&E says it is providing to CCAs is neither “real time” nor “near real-time.”⁵⁵ D.11-07-056 explicitly distinguished the data feeds provided by the IOUs at the time, just *1 day* in arrears, from the “real-time” usage data available through the HAN function of then-new Smart Meters it was requiring.⁵⁶ The Proposed Decision brushes off this precedent in the Reply as “various decisions and state and federal code” while missing their point, that *actionable* data, provided within mere seconds of customer usage, is a valuable feature of Smart Meters, the benefits of which are required to be provided directly to customers to better advance the Commission’s DR, load-shifting and affordability goals.⁵⁷ Petitioners’ Reply explained in depth how 5-7 second increment kilowatt-hour data streams provided at a 5-7 second latency differ from usage data published on SDG&E’s website, its Green Button data or data provided to CCAs:

(1) Data Latency: SDG&E claims to provide customer usage data to CCAs 2-3 *days* after the meter read,⁵⁸ while ZigBee-based real-time usage data is transmitted to a customer’s HAN device after about 5-7 *seconds* and enables real-time load shifting and automated control systems.⁵⁹ Resolution E-4527 compared the potential benefits enabled by such HAN functionality to customers monitoring their usage through a web-based utility portal and noted that HAN-based monitoring was projected to achieve more than ***three times*** the reduction in energy consumption.⁶⁰

(2) Data Interval: the data provided to CCAs cited in SDG&E’s Response has an interval of 15 to 60 *minutes*; by contrast, ZigBee provides far more granular, 5-7 *second* increments of energy

⁵² Proposed Decision at 12.

⁵³ *Id.* at 13.

⁵⁴ *Id.* at note 41 (citing D.09-12-046, COL 14), note 42 (citing Petition Appendix 1).

⁵⁵ Reply at 16-17.

⁵⁶ *Id.* at 16 (citing D.11-07-056 at 107).

⁵⁷ *Cf.* Proposed Decision at 12; Reply at 15-18.

⁵⁸ SDG&E Response at 6.

⁵⁹ Reply at 15-16; Murray PFM Declaration at ¶ 8; Murray Reply Declaration at ¶15.

⁶⁰ PFM at 18 (citing Resolution E-4527 at 6).

usage data.⁶¹ Per D.11-07-056, “[m]any of the benefits of a Smart Meter arise from establishing a [HAN] that has access to the *granular* data produced by the Smart Meters.”⁶²

(3) Data Transmission Pathway: usage data an IOU provides to CCAs, on SDG&E’s website or via Green Button, is decidedly not equivalent to data transmitted directly to a customer’s premises from the customer’s meter. The Real-Time Usage Data Access Orders require the IOUs to transmit the real-time usage data *directly* from customers’ meters to their HAN devices, stating “[t]he goal of this roll out is to provide California *customers* with secure, private, and *direct* access to the disaggregated data available in the Smart Meters.”⁶³

The Proposed Decision erroneously fails to incorporate these critical distinctions contained in the Commission’s findings of the ratepayer value of actual, real-time energy usage data access documented in the record.

IV. The Anticipated Smart Meter 2.0 Application Cannot Cure the Proposed Decision’s Improper Reversal of the Real Time Usage Data Access Orders.

The Proposed Decision problematically reasons that because SDG&E is expected to file an application for Smart Meter 2.0 “in the near future. [sic] Waiting until the next application cycle *when a record* can be developed and other alternatives can be proposed is the appropriate course of action.”⁶⁴ Incredibly, the Proposed Decision itself would have the effect of reversing Commission precedent in the absence of a record. The Proposed Decision’s reasoning degrades Commission orders into merely suggestions. Waiting for some unknown period of time to potentially correct SDG&E’s violation means SDG&E’s customers will continue to go without the real time energy usage data access to which they are entitled under the Commission’s consistent prior orders (and to which customers in other IOU territories have access). Many such customers have been waiting without such data access since early 2024.⁶⁵ Even if SDG&E’s application for Smart Meter 2.0 is filed in the remainder of 2025, WiFi-based Smart Meters are unlikely to be installed throughout SDG&E territory for many years to come.⁶⁶

⁶¹ Joint Petitioners’ Reply at 16-17 (citing Murray Reply Declaration at ¶ 15).

⁶² D.11-08-056, FOF 76 (emphasis added).

⁶³ D.11-07-056 at 117 (emphasis added).

⁶⁴ Proposed Decision at 13 (emphasis added). Proposed Decision footnote 45 does not appear in the footer.

⁶⁵ PFM at 8-9 (citing Murray PFM Declaration at C-4 to C-6).

⁶⁶ Murray PFM Declaration at ¶ 21.

Per SDG&E's testimony, 7,500 customer devices had been paired with SDG&E's existing Smart Meters.⁶⁷ The PFM pointed out that such customers, as well as any additional customers that connected HAN devices to obtain Smart Meter data since SDG&E's May 2022 testimony, could be impacted by SDG&E's reconnection denials. The PFM also noted the impact on customers making new requests to activate real-time access to their Smart Meter data.⁶⁸ This lack of direct, real-time customer data access frustrates numerous Commission policies, including real-time load-shedding, identification and quantification of loads, diagnosing usage during an energy audit, measurement and verification and validating curtailments. SDG&E's violations restrain customers' ability to save money on energy costs by shifting or reducing loads in real time, in the midst of California's electricity affordability crisis.⁶⁹ Pursuant to Rule 16.4, the PFM provided evidence of new facts that surfaced more than one year since D.22-12-009 was issued, namely that SDG&E's failure to provide this data access has led to the suspension of load flexibility offerings for commercial buildings and product development and sales efforts by DR providers in the past year. SDG&E's actions in reliance on D.22-12-009 has had real negative consequences for load flexibility for individual customers and California's grid.⁷⁰ The Proposed Decision unreasonably disregarded these new facts and circumstances, which justify the PFM.

Worse, the Proposed Decision would establish a dangerous precedent that any Commission order can be ignored so long as a regulated utility intends to address the requirement in a future application. If the durability of Commission decisions is subject to arbitrary and unjustified modification without due process, based upon merely a hope of future action, it would shake the foundations of the Commission's legitimacy. The Commission must reject the Proposed Decision and its deeply flawed reasoning.

V. Conclusion

The serious and pervasive legal and factual errors identified in these comments warrant major substantive revisions to the Proposed Decision. In accordance with Rule 14.3, the Petitioners have included in **Appendix A** hereto proposed minimum revised findings of fact and conclusions of law to remedy these errors in a manner that correctly reflects applicable law, legal precedent and the factual record, and grants the PFM.

⁶⁷ PFM at 9 (citing SDGE-1A at EBM 19:4-5).

⁶⁸ PFM at 9.

⁶⁹ *Id.* at 9-10.

⁷⁰ *Id.* (citing Murray PFM Declaration at C-6 to C-7).

Respectfully submitted,

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APPENDIX A

PROPOSED REVISIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

Key:

~~Deletions are shown in strikethrough~~

Additions are underlined and in **bold font**

Findings of Fact

1. The Petition was not filed within one year of the effective date of D.22-12-009.
 2. The Petitioners were not parties to the proceeding ~~in which~~ when D.22-12-009 was issued.
 3. The Petitioners stated how they were affected by D.22-12-009 and why they did not participate earlier in compliance with Rule 16.4(e).
 - ~~34.~~ The Petitioners allege a new or changed fact that was supported by declaration as required by Rule 16.4(b).
 - ~~45.~~ The Petitioners concisely state the justification for the requested relief and propose specific wording to carry out all requested modifications to D.22-12-009 in Exhibit D of the Petition.
- ~~The Petitioners did not sufficiently justify the filing of the Petition more than one year after the effective date of D.22-12-009 as required by 16.4(d).~~
6. SDG&E's testimony stated that its customers' Home Area Network devices that are connected to such customers' Smart Meters via ZigBee radio technology would remain connected until such customers' meters are replaced with a new meter not carrying ZigBee.
 7. Petitioners provided new evidence that SDG&E has failed to reconnect ZigBee-based connections between SDG&E Smart Meters and customer Home Area Network devices when disconnections occur.
 8. Petitioners provided new evidence that load flexibility and demand response projects and offerings were suspended or cancelled in SDG&E's territory more than one year after the issuance of D.22-12-009 as a result of SDG&E's failure to provide ZigBee-based connectivity.
 9. Petitioners provided new evidence that SDG&E has relied upon D.22-12-009 as justification for its refusal to make new ZigBee device connections upon customer requests and its failure to reconnect ZigBee-based connections between SDG&E Smart Meters and customer Home Area Network devices when disconnections occur.
 10. The Commission's denial of SDG&E's Smart Meter 2.0 project in D.24-12-074 delayed an SDG&E transition from Smart Meters that can transmit real-time energy usage data to a customer's Home Area Network device via ZigBee to Smart Meters that can provide real-time energy usage data access to a customer's home or business via WiFi.

Conclusions of Law

1. The Petition for Modification failed to satisfy the requirements of Rule 16.4(d). Petitioners alleged new facts and circumstances that sufficiently justify the filing of the Petition more than one year after the effective date of D.22-12-009, as required by Rule 16.4(d).
2. Petitioners alleged new facts and circumstances that sufficiently justify granting the Petition.
3. The Commission's prior orders in D.09-12-046, D.11-07-056 and Resolution E-4527 require Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company to provide access to the real-time (or near real-time) energy usage data directly from the customer's Smart Meter to the Home Area Network ("HAN") device of the customer's choosing.
4. D.22-12-009 did not reference D.09-12-046, D.11-07-056 and Resolution E-4527 nor conclude that SDG&E need not comply with such orders.
5. It is reasonable to modify D.22-12-009 to clarify that SDG&E remains required to comply with D.09-12-046, D.11-07-056 and Resolution E-4527, and, until SDG&E customers' Smart Meters 1.0 are replaced with Smart Meters that have WiFi connectivity, SDG&E shall
 - (a) reconnect existing ZigBee-based connections between customers' Smart Meters 1.0 and their HAN device in the event of disconnections; and
 - (b) make new ZigBee-based connections between customers' Smart Meters 1.0 and their HAN device.
6. D.22-12-009 should be modified as set forth in Exhibit D of the Petition.