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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement Senate Bill 237 Related to Direct Access.	R.19-03-009

RESPONSE OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO THE PETITION FOR MODIFICATION OF DECISION 21-06-033 BY THE ALLIANCE FOR RETAIL ENERGY MARKETS, CALIFORNIA COALITION OF LARGE ENERGY USERS, DIRECT ACCESS CUSTOMER COALITION, REGENTS OF THE UNIVERSITY OF CALIFORNIA, SHELL ENERGY NORTH AMERICA (US), L.P. AND WESTERN POWER TRADING FORUM

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RESPONSE OF SOUTHERN CALIFORNIA EDISON COMPANY (U 339-E) TO THE PETITION OF MODIFICATION OF DECISION 21-06-033 BY THE ALLIANCE FOR RETAIL ENERGY MARKETS, CALIFORNIA COALITION OF LARGE ENERGY USERS, DIRECT ACCESS CUSTOMER COALITION, REGENTS OF THE UNIVERSITY OF CALIFORNIA, SHELL ENERGY NORTH AMERICA (US), L.P. AND WESTERN POWER TRADING FORUM

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I. INTRODUCTION

Pursuant to Rule 16.4 of the California Public Utilities Commission's Rules of Practice and Procedure, Southern California Edison Company (SCE) respectfully submits this *Response to the Petition for Modification of Decision 21-06-033 by the Alliance for Retail Energy Markets, California Coalition of Large Energy Users, Direct Access Customer Coalition, Regents of the University of California, Shell Energy North America (US), L.P. and Western Power Trading Forum* (PFM). The PFM asks the Commission to modify Decision (D.) 21-06-033 – *Decision Recommending Against Further Direct Access Expansion* – to effectively reverse it by recommending to the Legislature that it should lift the limits on Direct Access (DA) service established in Section 365.1 of the Public Utilities Code for non-residential customers. The PFM does not ask to lift the prohibition in Section 365.1[1] on residential customers switching to DA service.

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[1] Section 365.1 was enacted in 2009 in Senate Bill 695. All references to code sections are to the Public Utilities Code unless otherwise stated.

The PFM should be denied because it is untimely and fails to provide adequate grounds to justify a reversal of D.21-06-033. Should the Commission wish to consider whether to recommend a lifting – in part or whole – of the restrictions on DA service, it should do so only after adequate due process and based on a robust administrative record.

II. THE PFM FAILS TO MEET THE COMMISSION'S STANDARDS FOR REVIEW AND SHOULD BE DENIED

The Commission's Rule 16.4 requires that a "petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit."[2] Moreover, "[e]xcept as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition."[3] The PFM fails to meet the procedural and substantive requirements of this Rule and should be rejected.

A. The PFM Is Untimely Because the Impact of D.21-06-033 Was Known Within One Year of Its Issuance

The PFM states that it is the "direct result of Commission Decision 26-02-057 (the IRP Decision)," which orders new system reliability procurement by all Load Serving Entities (LSEs), including Electric Service Providers (ESPs), Community Choice Aggregators (CCAs) and investor-owned electric utilities (IOUs). The PFM explains that DA stakeholders find the IRP Decision unfair

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2 *See* Rule 16.4 of the Commission's Rules of Practice and Procedure, subsection b.
3 *See id*., subsection d.

because it requires ESPs to procure their share of needed new system reliability resources when ESPs are unable to serve, without limit, new load like data centers and electric vehicle charging that is anticipated to contribute to new system reliability procurement needs. Some of the petitioners have challenged the IRP Decision in an Application for Rehearing (AFR) seeking the reconsideration of D.21-06-033 or the reallocation of D.26-02-057's procurement requirements.[4] In the PFM, these petitioners also urge the Commission to recommend lifting the limits on DA service for non-residential customers through a modification of D.21-06-033 (which the PFM calls the "DA Decision").

The PFM argues that it "could not have been filed within one year of the DA Decision (D.21-06-033) because the total impact of the decision was not clear until recently."[5] SCE disagrees. The impact of D.21-06-033 was clear when it was issued and remains so: that the law precludes (and per the Commission's recommendation should continue to preclude) customers from switching to DA service once the DA cap in an IOU's service area is reached. The petitioners may not have known in 2021 that data centers (for example) would, in 2026, be anticipated sources of new load, but they would have known, or should have anticipated, in 2021 that there *will be* sources of new load that will be precluded from taking DA service if and when the caps on DA service are reached. They also should have known or anticipated in 2021 that the Commission will order LSEs to procure – and/or their customers to pay the costs of – their share of system reliability needs because the Commission had already done so with its IRP electric system reliability procurement orders in D.19-11-016 and D.21-06-035.[6] [7]

4 *See* Application for Rehearing of D.26-02-057 by the Alliance for Retail Energy Markets, Coalition of California Large Energy Users, The Regents of the University of California, and Shell Energy North America (US), L.P., filed April 6, 2026 (the AFR). SCE has filed a timely response to this AFR and so does not discuss the AFR issues here.

5 *See* PFM, p. 5.

6 *See* D.19-11-016 and D.21-06-035, which were issued in the former IRP docket, R.20-05-003. D.19-11-016 allowed ESPs and CCAs to opt out of their share of the procurement order and some ESPs and CCAs did so, requiring the IOUs to procure on their behalf. The opt-out LSEs' customers were responsible for their share of the costs of the reliability procurement on their behalf.

7 The Commission observed in D.26-02-057, p. 25, stating "As we have since our first IRP procurement order in 2019, we expect the LSEs generally to be in the market with solicitations regularly, as they should be planning for load growth and future resource needs in advance. Therefore, we expect that the Commission's consideration of requiring additional procurement after the expiration of the current MTR requirements should not come as a complete surprise to the LSEs or other market actors. LSEs have also been on notice

(continued on the next page)

The impact of D.21-06-033 on ESPs' ability to serve future new load is not an unexpected change in facts or circumstances given the limits on DA service in Section 365.1. Because the impact of the DA caps and the Commission's decision to recommend against lifting or expanding them was foreseeable at the time of D.21-06-033 was issued, the petitioners had ample time to anticipate any impact the DA caps may have on their ability to serve future new load, and file the PFM within one year.[8] The PFM does not provide sufficient justification for the untimely filing and it should be rejected on this ground alone.

B. The PFM Fails to Adequately Support Its Asserted New or Changed Facts

The PFM claims that "the conditions that the DA Decision seemed to rest upon simply do not exist and have not for many years."[9] It explains that changes in California law were enacted to require ESPs to make "meaningful contributions" to system reliability and the state's energy objectives;[10] that the Resource Adequacy (RA) market is now in a surplus and ESPs' had zero violations for RA compliance in 2025;[11] that compliance with MTR procurement is unclear but the petitioners suspect that it will "markedly improve" once the Commission has issued updated progress reports;[12] that ESPs are "better suited at preventing cost shifting" as a result of new load because they use "dedicated contracts" that will "insulate" residential small commercial customers from "rate increases" from new load if

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that the Commission is considering approaching ongoing procurement needs with a programmatic approach, in the form of the RCPPP proposal under development in R.20-05-003. The adoption of some form of programmatic requirement will also impose ongoing procurement requirements on LSEs. In general, the proposed new resource requirement of 1,500 MW NQC annually in the ALJ Ruling does not seem unreasonable or particularly burdensome in light of the size of the resource need when considering the magnitude of California's GHG goals out through 2045."

8 *See* D.25-10-007 issued in R.12-02-009, declining to consider a PFM despite a change in intervening facts and circumstances because the increase in CCA programs was an expected change in circumstances given the policy goals in Assembly Bill 117 and petitioners "had ample opportunity to get familiar with the Code's requirements, anticipate any impact the requirements may present on their ability to communicate with local governments, and request modifications within the year provided by Rule 16.4(d)." *See also* Finding of Fact 3, stating "[i]ncreased interest in CCA formation and potential changes in circumstances resulting from the increased number of CCAs were foreseeable within one year of the adoption of the Code of Conduct."

9 PFM, p. 8.

10 *See id*., pp. 3, 9.

11 *See id*., pp. 13-14.

12 *See id*., p. 15.

served by other LSEs and "stranded costs";[13] that poor experiences with direct access in other states might not happen in California due to its procurement requirements;[14] that criticisms of ESPs relying on system power and not procuring Renewables Portfolio Standards (RPS) resources in excess of requirements were unfair;[15] that ESPs may exceed RPS requirements if their customers want to do so, but DA customers likely have "lower desire to exceed RPS requirements on a voluntary basis due to cost concerns";[16] and that more customers would opt for DA if they could,[17] even though the DA caps were not reached in any of the IOUs' service areas as of March 31, 2026.[18]

Even if these assertions of new and changed facts are true,[19] they are inadequately supported in the PFM. The PFM fails to include any declaration or affidavit supporting these alleged new and changed facts[20] and the Commission has no record of support for the PFM's suggested revisions to D.21-06-033. The PFM should be rejected on this ground alone.

Moreover, SCE questions the veracity or implication of some of the PFM's alleged but unsupported new or changed facts. For example, the PFM admits that ESPs' meaningful contributions to reliability had to be compelled through recent new legislation and their track record is fairly short, which may not give the Commission sufficient confidence that the state's ambitious climate action and clean energy goals can be met by expanding DA service. Indeed, some of the petitioners seeking reallocation of the latest IRP procurement obligations in the aforementioned AFR have previously requested that ESPs be exempted from those procurement requirements unless and until ESPs are directly authorized to

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[13] *See* PFM, pp 11-12, 16.

[14] *See id.*, p. 15.

[15] *See id.*, p. 16.

[16] *See* PFM, p. 18.

[17] *See id.*, pp. 18, 5 and fn. 9

[18] *See* Commission's Supplemental Direct Access Implementation Activities Report, Statewide Summary, dated April 15, 2026, available at https://www.cpuc.ca.gov/consumer-support/consumer-programs-and-services/electrical-energy-and-energy-efficiency/community-choice-aggregation-and-direct-access-/direct-access-implementation-activity-reports.

[19] *See* PFM, p. 7, offering "the following facts in support of modifying the DA Decision" in Sections A – G.

[20] The PFM's signed declaration speaks only to the petitioners' claims about why they could not have filed the PFM within one year of D.21-06-033. *See e.g.,* Declaration of Daniel W. Douglass in Support of the PFM, at paragraph 8, stating "[p]er the facts cited above, I declare that this Petition could not have been filed within one year of the issuance of the Decision."

serve new large-load customers or to exceed the DA cap.[21]. Furthermore, though the PFM asserts that ESPs met their RA requirements during 2025, the PFM also reveals that ESPs failed to meet their RA requirements and incurred RA violation fines for every previous year during 2017-2024.[22]

The PFM is also unconvincing that expanding DA to serve data centers will "insulate" residential and small commercial customers from alleged other LSE rate increases and stranded costs, because data center load is expected to *lower* rates for IOU customers by spreading more load across an IOU's volumetric rates. Rather, expanding DA for non-residential customers is more likely to cause rate increases for residential customers. And the risks of stranded costs from data centers rest largely on the IOUs as distribution service providers that must interconnect data centers, which may require the IOUs to incur distribution infrastructure upgrade costs on the promise of new load that may not fully materialize.

Similarly, the PFM is unconvincing that DA in California is not vulnerable to stressed market events like those discussed in D.21-06-033.[23] Given that DA service is largely unregulated, it is unknown whether ESPs sufficiently hedge against volatile and high market prices and/or have sufficient liquidity to ride out sustained stressed market events. ESPs can fail or otherwise exit the market at any time with little to no notice. In these regards, DA service poses consumer protection risks that are mitigated by the capped service.

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[21] *See* AFR, pp. 4, 19; Reply Comments of Shell Energy on the Administrative Law Judge's Ruling Seeking Comments on Electricity Portfolios for 2026-20276 Transmission Planning Process and Need for Additional Reliability Procurement, R.25-06-019, October 31, 2025, p. 11.

[22] *See* PFM, p. 14 (providing tables labeled "RA Violations" and "RA Violation Fines" demonstrating ESP violations of RA requirements and assessment of fines during 2017-2024).

[23] *See* D.21-06-033, pp. 19-20, explaining that the massive February 2021 outages in Texas "showed what can happen if regulatory oversight is too limited. Even when wholesale power prices reached their cap of $9,000 per MW hour, customer load reduction was not sufficient to avert outages. Some customers who did have power experienced extreme rate and bill impacts. An extreme example of the bill impacts was felt by customers of Griddy, a Texas direct retail provider that charges customers the wholesale price as a passthrough, encouraged customers to switch providers during the outage to avoid paying the $9,000 wholesale rate. Ironically, in the comments filed in this proceeding in 2020, Direct Access Parties, such as NRG, pointed to the Texas energy market as a model of a fully competitive market; clearly, the Texas model now serves as a warning to proceed with caution, careful planning, and continuing evaluation of the effectiveness of planning structures given changing market and weather conditions."

The PFM does not address the fragmentation of the procurement landscape in California that was a cause for concern in D.21-06-033[24] and remains a concern: as more load is divided among more LSEs in the IOUs' service areas, the less certain it becomes that large reliability facilities will be procured for reliability purposes. The Commission has had to direct the IOUs to procure those resources on behalf of all customers and recover the costs through the IOUs' Cost Allocation Mechanisms. SCE questions whether having to lean on the IOUs for critical reliability procurement in an increasingly fragmented procurement landscape is compatible with unlimited opportunities for customers to depart the IOUs' procurement service for other LSE services. SCE also questions the impact on affordability, particularly for residential customers if non-residential customers have unlimited opportunities to depart IOU procurement service for DA service.

The PFM does not resolve these concerns, which warrant denying the PFM's request to reverse the Commission's recommendation against further DA expansion in D.21-06-033.

III. IF THE COMMISSION ELECTS TO RECONSIDER THE MERITS OF DA EXPANSION, IT SHOULD DO SO IN A RULEMAKING THAT ALLOWS FOR DUE PROCESS AND A ROBUST RECORD

Nothing compels the Commission to revisit its recommendation in D.21-06-033 because the PFM fails to satisfy the Commission's standards for review as explained in Section II, and because the statutory provisions that directed the Commission to make its recommendation to the Legislature on DA expansion were repealed in Assembly Bill 1373 in 2023.[25] With the many high priorities pending before it, the Commission should consider whether opting to do so is the best use of its limited resources, particularly given that any expansion would require legislation.

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[24] *See* D.21-06-033 at p. 3 and fn. 2: "This decision finds that expansion of Direct Access would further fragment the market, which in turn could exacerbate the planning and related activities necessary to ensure grid reliability. . . . For example, increased retail options mean that customers will be able to frequently switch between providers in an unpredictable manner for years to come. As a result, it will not be possible to know the load of individual LSEs in the long-term. This in turn makes it difficult for LSEs to finance the new build generation that is needed to keep the grid reliable."

[25] *See* AB 1373 (Garcia, 2023), which deleted subsection (f) of Section 365.1.

Should the Commission nevertheless elect to reconsider the merits of further DA expansion, it should proceed in the same manner it did in reaching its recommendation in D.21-06-033: through a rulemaking that allows for due process and a robust administrative record on the issues. Any such consideration should include whether expansion should remain limited rather than entail a lifting of caps, whether DA should continue to be restricted to non-residential customers, and whether consumer protections – such as financial viability, Financial Security Requirements and Re-Entry Fees – should be enhanced commensurate with any further DA expansion.

IV. CONCLUSION

SCE appreciates the opportunity to submit this response.

Respectfully submitted,

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