BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) TO PETITION FOR MODIFICATION OF DECISION 21-06-033

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I. INTRODUCTION

Pursuant to Rule 16.4(f) of the Rules of Practice and Procedure of the California Public Utilities Commission (the "Commission"), San Diego Gas & Electric Company ("SDG&E") 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, the Regents of the University of California and Shell Energy North America (US), L.P., and Western Power Trading Forum* ("Petition" or "PFM").

In the PFM, the Competition Parties[1/] seek modification of Decision ("D.") 21-06-033 (the "DA Decision"), issued on June 29, 2021. The Competition Parties assert that the Commission's recent issuance of D.26-02-057 (the "IRP Decision"), which allocates to energy service providers ("ESPs") a proportional share of the overall obligation to procure new reliability resources determined through the Commission's Integrated Resource Planning ("IRP") process, is a "new fact" or "changed circumstance"[2/] under Rule 16.4(b) that justifies

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1/ The Rehearing Parties include the Alliance for Retail Energy Markets, Direct Access Customer Coalition, the Regents of the University of California and Shell Energy North America (US), L.P., and Western Power Trading Forum.

2/ *See Declaration of Daniel W. Douglass in Support of Petition for Modification* (noting that "[t]he purposes of this declaration is to support the factual allegations regarding new facts and changed circumstances set forth in the Petition for Modification filed by the Competition Parties in this proceeding.").

modification of the DA Decision. The Competition Parties note that they filed the PFM "as a direct result of" the issuance of the IRP Decision,[3] alleging that the load-based allocation approach used in the IRP Decision "will significantly and negatively impact [Direct Access ("DA")] customers by imposing on their ESP suppliers procurement obligations that exceed the ESP's load they are legally permitted to serve under the DA cap."[4] The Competition Parties request that the Commission modify the DA Decision to issue a recommendation to the legislature that the DA cap be immediately removed.[5] The Competition Parties claim that since the effective date of the IRP Decision is March 5, 2026, the PFM could not have been presented within one year of the effective date of the DA Decision.[6]

As discussed in more detail below, the PFM should be denied on both procedural and substantive grounds. First, the Competition Parties' claim that use of a load-based allocation methodology to assign procurement responsibility to ESPs is a "new fact" or "changed circumstance" is false. The Commission's use of a load-based allocation approach to assign procurement responsibility to load-serving entities ("LSEs"), including ESPs, pre-dates issuance of the DA Decision. In addition, the "facts" offered in Section II of the PFM to support the requested modification of the DA Decision do not relate to the issuance of the IRP Decision (the purported new fact that prompted the PFM[7]), and for the most part are not facts at all but are instead conjecture and unsupported opinion. The declaration provided in support of the application does not mention the "facts" offered in Section II; nor does the PFM provide record

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[3] PFM., p. 2.

[4] *Id*., p. 6.

[5] *Id*.

[6] *Id*., pp. 2, 6.

[7] PFM, p. 2 ("This Petition is filed as a direct result of Commission Decision D.26-02-057 . . .").

support for or request official notice of the matters discussed in Section II.[8] Thus, the Competition Parties fail to show that the late submission of the PFM is justified, and also fail to meet their burden under Rule 16.4(b) of providing "justification for the requested relief." Accordingly, the PFM should be summarily rejected.

II. DISCUSSION

A. The PFM Should be Summarily Denied Under Rule 16.4(d) Since the Concern Regarding the Commission's Load-Based Method for Allocating Procurement Responsibility Could Have Been Raised at the Time the DA Decision was Issued or Within One Year of Issuance of the DA Decision

The IRP Decision assigns procurement responsibility to LSEs, including ESPs, on a load-share basis using each LSE's share of the managed peak on the electric system in resource adequacy program year 2026.[9] The assertion by the Competition Parties that the Commission's use of a load-based allocation methodology to assign procurement responsibility to ESPs in the IRP Decision is a "new fact" or "changed circumstance" is incorrect. The IRP Decision notes explicitly that the load-based allocation approach it uses is based on the load-based allocation approach that was previously used by the Commission in its mid-term reliability decision, D.21-06-035 (the "2021 MTR Decision").[10] The 2021 MTR Decision, in turn, explains that the load-based allocation approach used in that decision aligns with the load-based allocation approach

[8] *See* Rule 16.4(b).

[9] D.26-02-057, p. 44.

[10] *Id*. (" . . . we will allocate LSE procurement responsibility . . . in the same basic manner as the procurement requirements were allocated under the MTR and Supplemental MTR orders.").

used in D.19-11-016, which assigned procurement responsibility to LSEs, including ESPs, "on the basis of their proportional load share at the time the requirement was adopted."[11/] [12/]

In other words, the load-based allocation approach used by the Commission in the IRP Decision was in place well prior to adoption of the DA Decision. Indeed, D.19-11-016 was issued approximately *six months before* issuance of the DA Decision. Thus, any concerns regarding the purported unfairness of the load-based allocation approach given the continued existence of the DA cap could have been raised at the time the DA Decision was under consideration.

Likewise, the Competition Parties could have sought to modify the DA Decision to address the purported harm caused by the load-based allocation approach at the time the Commission adopted the 2021 MTR Decision. The 2021 MTR Decision was issued on June 30, 2021 – *one day after* the DA Decision was issued. If the Competition Parties had requested modification of the DA Decision at that point, they would have been well within the one-year period established under Rule 16.4(d). Instead, these parties waited nearly five years to raise their concern with the Commission's load-based allocation approach. The PFM does not acknowledge that the IRP Decision explicitly cites and continues the load-based allocation methodology applied in the 2021 MTR Decision (which, as noted above, continues the approach applied in D.19-11-01) and fails to offer any explanation as to why a PFM could not have been filed in 2021 upon the issuance of the 2021 MTR Decision.

11/ D.21-06-035, p. 48; *see also id*. at 53 (" . . . we will utilize the same basic method of assigning procurement allocations to LSEs based on load share, and implemented in a similar manner to the procurement obligations assigned in D.19-11-016.").

12/ *See* D.19-11-016, pp. 39 (directing that the adopted procurement requirement be shared by all LSEs, including ESPs, on the basis of projected load share for 2021).

Rule 16.4(d) makes clear that "[i]f the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition." The Competition Parties' claim that they were unable to present their concerns regarding the implications of the Commission's load-based procurement allocation or file a PFM seeking to modify the DA Decision within the mandated one-year period clearly lacks merit. Accordingly, the PFM should be summarily denied by the Commission on that basis.

B. The Petition Does Not Offer Adequate Evidence to Support the Relief Requested in the Petition

The Competition Parties assert in the PFM that the IRP Decision "will significantly and negatively impact DA customers by imposing on their ESP suppliers procurement obligations that exceed the ESP's load they are legally permitted to serve under the DA cap."[13] Putting aside the erroneous nature of this claim, which is addressed in SDG&E's response to the separate Application for Rehearing ("AFR") of the IRP Decision that was jointly filed by a sub-set of the Competition Parties,[14] the PFM fails to present evidence demonstrating that the Commission's application of the load-based allocation methodology in the IRP Decision justifies the Competition Parties' request that Commission modify D.21-06-033 and issue a recommendation to the legislature to remove the DA cap.[15]

Rather than presenting factual support and analysis to support the claim that the load-based methodology adopted in the IRP Decision will cause actual and unreasonable harm to

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[13] PFM, p. 6.

[14] R.25-06-019, *Response of San Diego Gas & Electric Company to Application for Rehearing of Decision 26-02-057* (April 21, 2026).

[15] PFM, p. 6.

ESPs, the PFM sets forth the following "facts in support of modifying the DA Decision"[16] to justify the relief requested in the PFM:

1) The initial September 2020 Staff Report assessment recommended reopening DA;

2) The suspension of DA and the DA cap are an outdated vestige of the 2000-2001 energy crisis;

3) The DA Program is ideal for serving new large loads;

4) Reliability would no longer be at risk if DA was reopened;

5) The alleged increase in Greenhouse Gas ("GHG") emissions has also been addressed;

6) The concerns regarding Renewables Portfolio Standard ("RPS") procurement and criteria air pollutants are unfounded; and

7) Enrollment in DA is currently a very involved process, yet customers are eager to sign up.

As a threshold matter, the PFM does not explain the relationship between these "facts" and the load-based allocation methodology applied in the IRP Decision, which is the purported new fact/changed circumstance that prompted the PFM. Rather than explaining why issuance of the IRP Decision justifies modification of the DA Decision, it appears that the discussion of "facts" in Section II is intended to address the four findings regarding DA reopening required by Section 365.1 (the Required Findings):[17]

a) The recommendations are consistent with the state's GHG emission reduction goals;

b) The recommendations do not increase criteria air pollutants and toxic air contaminants;

c) The recommendations ensure electric system reliability; and

[16] *Id*. at 7.

[17] *See* D.21-06-033, pp. 5-6.

d) The recommendations do not cause undue shifting of costs to bundled service customers of an electrical corporation or to direct transaction customers.

However, the discussion in Section II does not even comprehensively address the Required Findings and is, instead, little more than a sales pitch for removal of the DA cap. It consists of recycled arguments in favor of reopening DA and incomplete, cursory discussion of highly complex issues related to reliability and compliance with the state's clean energy goals. The statements offered by the Competition Parties are based on extra-record evidence with no evidentiary value and are not supported by a request for official notice of the matters discussed or a declaration or affidavit, as is required under Rule 16.4 (the declaration offered in support of the PFM does not address the "facts" offered in Section II). The Competition Parties fail to meet their burden under Rule 16.4(b) of providing "justification for the requested relief." Accordingly, the Commission should deny the PFM in its entirety.

III. CONCLUSION

For the reasons discussed herein, the Commission should summarily deny the PFM.

Respectfully submitted this 6th day of May 2026.

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