BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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ADVANCED ENERGY UNITED MOTION TO MODIFY TRACK 2 SCHEDULE

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Pursuant to Rule 11.1 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Advanced Energy United ("AEU") respectfully submits this *Motion to Modify Track 2 Schedule* ("Motion").

I. INTRODUCTION & SUMMARY OF RECOMMENDATIONS

In Decision ("D.") 24-05-028 in Rulemaking ("R.") 22-07-005, the Commission adopted "a gradual, incremental approach" to implementing income graduated fixed charges ("IGFC", now commonly referred to as the "Base Services Charge" or "BSC") on residential customers.[1] As part of that approach, the Commission "established a process for the Commission's staff to draft an evaluation report for [IGFCs] based on one calendar year of metrics and input from the Implementation Working Group [('IWG')]" and determined that "[t]he evaluation report will be used to inform the design of the next version of [IGFCs]."[2] The Scoping Ruling in the instant case adopts a procedural schedule that ignores this directive and renders compliance with it

[1] D.24-05-028, p. 3.
[2] D.24-05-028, pp. 101, 138-139, and Conclusion of Law 37.

impossible.[3] Specifically, the Scoping Ruling's Track 2 schedule requires Commission staff to submit a proposal on the next iteration of BSCs by the first quarter of 2027, before it will be possible for staff to review and incorporate the findings of the evaluation report on the first version of BSCs into that proposal.[4]

This is improper for at least two reasons. First, a single-Commissioner ruling cannot effectively nullify a conclusion adopted by the Commission in a final Commission order.[5] Second, the Commission cannot overrule a prior order without providing notice, an opportunity to be heard, and findings supporting its decision.[6] The Commission should rectify these errors in the Scoping Ruling by issuing an updated Scoping Ruling that revises the Track 2 schedule consistent with the Commission's prior directives concerning the process to develop the next version of BSCs.

The Scoping Ruling also errs in prematurely determining that no evidentiary hearings are necessary for Track 2. In adopting the first iteration of BSCs in R.22-07-005, stakeholders fully litigated several disputed factual matters, some of which remain unresolved and are likely to be disputed again in this successor docket. The Scoping Ruling's conclusory statement to the contrary is not explained or supported. In its revised Scoping Ruling, the Commission should recognize the need for hearings to resolve the disputed issues of material fact likely to arise in Track 2.

II. THE SCOPING RULING'S TRACK 2 SCHEDULE IMPROPERLY MODIFIES A FINAL COMMISSION ORDER

The Scoping Ruling's Track 2 schedule is in direct conflict with D.24-05-028. The Commission concluded in D.24-05-028 that the "lessons learned from the implementation of

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[3] R.26-04-009, *Assigned Commissioner's Scoping Memo and Ruling* (Sept. 22, 2026) ("Scoping Ruling").

[4] Scoping Ruling, p. 7.

[5] *See* Section II.A herein.

[6] *See* Section II.B herein.

[IGFCs] should influence the design of future [IGFCs] or alternative rate mechanisms."[7] To accomplish this goal, the Commission directed staff to draft an evaluation report for BSCs based on *one full calendar year of metrics and input* from the BSC IWG, and use that evaluation report "to inform the design of the next version of [IGFCs]."[8] Given the implementation timing of the first iteration of BSCs, one full calendar year of metrics and input from the IWG will not be available until March 2027.[9] Accordingly, staff will only be able to *begin* analyzing this data for purposes of drafting an evaluation report in March 2027 at the earliest.

The Scoping Ruling in the instant case sets a schedule that would not allow this evaluation report to inform the Commission staff proposal on the next version of BSCs. It scopes Track 2 of this proceeding to cover residential rate modernization broadly, including any adjustments to the residential BSCs and any modifications to the income verification processes for these charges adopted in D.24-05-028.[10] The Scoping Ruling's schedule for Track 2 provides that staff will issue a proposal on residential rate issues in the first quarter of 2027; parties will discuss that proposal at a workshop within 20 days of issuance of the proposal and submit opening and reply comments on it within approximately two months of issuance; and the Commission will issue a decision on Track 2 in the third quarter of 2027.[11]

Commission staff cannot analyze a full year's worth of data on BSCs and release an evaluation report on that data in time for them to also issue a Track 2 proposal in this case on the

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7 D.24-05-028, Conclusion of Law 37.

8 D.24-05-028, pp. 101, 138-139.

9 D.24-05-028, pp. 107-108 (directing SCE and SDG&E to implement the BSC between October 1, 2025 and December 15, 2025 and directing PG&E to implement the BSC between January 1, 2026 and March 31, 2026); PG&E Advice Letter 7846-E (Feb. 27, 2026), *available at* https://www.pge.com/tariffs/assets/pdf/adviceletter/ELEC_7846-E.pdf (updating PG&E's electric rates and tariffs effective March 1, 2026, including with the final implementation of the residential BSCs).

10 Scoping Ruling, pp. 3-4 (Scoping Items 4, 5, and 6).

11 Scoping Ruling, p. 7.

next iteration of BSCs that meaningfully considers that report during the first quarter of 2027. The raw data to inform the evaluation will only become available in March 2027—*i.e.*, at the end of the first quarter of 2027. Even assuming a quick turnaround on staff's draft evaluation report, it is impossible for it to become available before March 2027, and highly unlikely for it to become available before April or May of 2027. A meaningful review of that evaluation report "to inform the design of the next version of [IGFCs]"[12] via the staff's proposal on residential rates in this docket therefore cannot occur by the end of Q1 2027, as the Track 2 schedule requires.

This conflict between the Commission's directives in D.24-05-028 and the Scoping Ruling's contemplated timeline for Track 2 is legally impermissible because (1) a single Commissioner cannot effectively nullify a conclusion adopted by the Commission in a final Commission order, and (2) even the full Commission cannot overrule a prior order without providing adequate notice and opportunity to be heard on the modification and without supporting the modification with findings on the material issues.

A. A Single-Commissioner Ruling Cannot Modify A Conclusion Adopted In A Commission Order

The Scoping Ruling errs in adopting a Track 2 schedule that conflicts with the Commission's clear directive in D.24-05-028 that the evaluation report on the first iteration of BSCs must inform the design of the next version of BSCs. An assigned Commissioner's scoping ruling cannot modify, supersede, or render compliance with a Commission decision impossible absent subsequent Commission action. Public Utilities Code Section 1701.1[13] provides that an assigned Commissioner's authority to issue a scoping ruling extends to defining the issues to be considered,

[12] D.24-05-028, pp. 101, 138-139.

[13] All future Section references herein refer to the California Public Utilities Code, unless otherwise noted.

the procedural schedule, and the need for hearing.[14] That procedural authority does not empower a single Commissioner to modify, suspend, or effectively nullify a conclusion adopted by the Commission in a formal Commission order. In fact, the Commission has explicitly found that single-Commissioner rulings "do[] not have the effect of a Commission order until . . . confirmed by the Commission."[15] The Scoping Ruling therefore exceeds the procedural authority conferred by Section 1701.1 by adopting a schedule that renders compliance with the Commission's directives in D.24-05-028 impossible.[16]

B. The Commission Cannot Alter A Prior Order Without Providing Notice, An Opportunity To Be Heard, And Findings Supporting Its Modified Order

While the full Commission has the authority to reconsider and modify its decisions, state law puts guardrails on its ability to do so. Specifically, to modify a prior decision, the Commission must (1) expressly identify the directive at issue from the prior decision to ensure adequate notice and opportunity to be heard,[17] and (2) support its modification with findings on the material issues.[18] Even putting aside the fact that a single-Commissioner ruling is not the appropriate procedural vehicle for modifying a Commission order, the Scoping Ruling also failed to adhere to these statutory requirements regarding altering prior orders.

Section 1708 provides that the Commission may "rescind, alter, or amend any order or decision made by it," but only "upon notice to the parties, and with opportunity to be heard."[19] Consistent with this requirement, the Commission has rejected proposed changes to prior

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[14] Cal. Pub. Util. Code § 1701.1(b)(1); Commission Rules of Practice and Procedure, Rule 7.3.

[15] D.02-01-035, p. 6 (relying on Cal. Pub. Util. Code § 310, the Commission found that a single-Commissioner ruling "does not have the effect of a Commission order until it is confirmed by the Commission").

[16] *See* D.24-05-028, pp. 101, 138-139.

[17] Cal. Pub. Util. Code § 1708.

[18] Cal. Pub. Util. Code § 1705.

[19] Cal. Pub. Util. Code § 1708.

Commission orders in the past when those proposed changes were introduced at a stage of the litigation that would not allow proper notice or opportunity to be heard on the modification at issue.[20] The Scoping Ruling nonetheless adopts a Track 2 schedule that cannot be reconciled with D.24-05-028's directive that the evaluation report on the first iteration of BSCs inform the design of the next version. It does so without any of the procedural steps Section 1708 requires: no notice was given that the Commission was considering altering that directive, and stakeholders have had no opportunity to address whether such a change is warranted. The Commission should therefore revise the Track 2 schedule to align with D.24-05-028 or, if it wishes to depart from that decision, do so through a process that satisfies Section 1708.

Further, any Commission decision modifying a prior order must be supported with separately stated findings of fact "on all issues material to the order or decision[,]" consistent with Section 1705.[21] Separately stated findings are essential to "afford a rational basis for judicial review[,]" "assist the reviewing court to ascertain the principles relied upon by the commission and to determine whether it acted arbitrarily," and to "assist parties to know why the case was lost and to prepare for rehearing or review."[22] The Commission has recognized that explanation in the text of a decision does not satisfy this requirement.[23] It has also found, specifically in the context of the Commission departing from a previously adopted approach, that the departure must be supported by findings on the material issues that justify the adopted change.[24] As the Scoping Ruling is not a formal Commission decision, it does not contain separately stated findings of fact

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[20] D.06-11-019, pp. 27-28 (declining to consider recommended changes to a proposed decision on the merits because adopting them at that stage in the case would have resulted in a modification to a prior Commission decision without the notice and opportunity to be heard required by Section 1708).

[21] Cal. Pub. Util. Code § 1705.

[22] *Greyhound Lines, Inc. v. Pub. Util. Comm'n*, 65 Cal. 2d 811, 813 (1967).

[23] *See* D.01-10-036, pp. 7-8.

[24] *Cal. Mfrs. Ass'n v. Pub. Util. Comm'n*, 24 Cal. 3d 251, 259 (1979) (annulling decisions where "neither finding nor evidence" supported the Commission's justification for "changing its method").

on *any* issue; furthermore, it fails to even explain its reasoning for altering the Commission's ordered process for modifying BSCs, or acknowledge that it is doing so.

Thus, the Scoping Ruling not only effectively modifies D.24-05-028 through an assigned Commissioner's ruling rather than a Commission decision, but it does so without the notice, opportunity to be heard, and findings that state law requires before the Commission may alter a prior decision. The Commission should promptly remedy these errors by revising the Track 2 schedule to conform to D.24-05-028.

III. THE SCOPING RULING ERRONEOUSLY CONCLUDES THAT HEARINGS ARE NOT NECESSARY IN TRACK 2

The Scoping Ruling asserts, without any discussion or explanation, that "there are no disputed issues of material facts in Track 2-4 of this proceeding[,]" and therefore that "no evidentiary hearing is needed for those tracks in this proceeding."[25] This finding in the Scoping Ruling was premature, unsupported by the record, and unreasonable. The Scoping Ruling should therefore also be revised to reflect that evidentiary hearings are likely to be necessary to litigate Track 2 issues.

Section 1701.1 requires the determination of hearing need to be consistent with due process, public policy, and applicable statutory requirements.[26] Rule 12.3 further provides that "[i]f there are no material contested issues of fact, or if the contested issue is one of law, the Commission may decline to set hearing."[27] The Commission's determination regarding the existence of material contested issues of fact necessitating hearing must be reasonable.[28] The Scoping Ruling's determination fails to meet these standards.

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[25] Scoping Ruling, p. 6.
[26] Cal. Pub. Util. Code § 1701.1(b)(1).
[27] Commission Rules of Practice and Procedure, Rule 12.3.
[28] *See* D.10-09-018, p. 15 (finding that the Commission's conclusion that there were no clearly identified disputed issues of fact that would warrant evidentiary hearings was reasonable because the

First, several parties—including Pacific Gas and Electric Company,[29] San Diego Gas and Electric Company,[30] and Southern California Edison Company[31] —indicated in comments on the Order Instituting Rulemaking that hearings were likely to be necessary on BSC issues. The Scoping Ruling does not contend with these stakeholder positions nor explain how it came to an alternate determination.

Second, the Scoping Ruling's conclusion is questionable in light of the many disputed factual issues litigated in R.22-07-005, the predecessor proceeding on BSCs. One of the most contentious factual disputes in that case centered on parties' positions on which subset of utility costs are truly "fixed" such that they are appropriate to recover via the BSC. In fact, the Commission ultimately concluded in D.24-05-028 that "[t]he record is not sufficient to determine which portion of Non-Marginal Distribution Costs are fixed costs[,]" and that it may take up this

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disputing party "raised only broad and overarching objections" and "never submitted any contrary factual evidence to demonstrate there was a tangible and legitimate factual dispute").

[29] R.26-04-009, *PG&E's Opening Comments on the OIR on California Advanced Electric Rate Design*, p. B-3 (May 11, 2026) (discussing PG&E's proposed Track 2a, which it argued should focus on changes to the BSC within its existing structure, PG&E noted it "anticipates workshops, testimony, comments to Rulings, and hearings will be required on these issues to establish the record for a Commission decision"); R.26-04-009, *Reply Comments of PG&E*, pp. 10-11 (May 21, 2026) ("PG&E strongly cautions the CPUC not to adopt any structural changes to the initial BSC until it cures the current lack of an adequate record for adopting any modification to the initial BSC approach. PG&E believes it would be unwise from an affordability standpoint to move forward without a more careful review of costs and customer impacts. Attempting to do so now without an additional evidentiary record would constitute legal error; instead, the schedule should provide time to compile the appropriate evidence and carefully consider the impact, including on affordability, of any alternative income verification approaches").

[30] R.26-04-009, *SDG&E Opening Comments on OIR on California Advanced Electric Rate Design*, p. 23 (May 11, 2026) ("For purposes of Track A on the BSC . . . SDG&E is proposing that the parties submit testimony in support of their various proposals addressing the BSC-related preliminary issues in the Scoping Memo. A requirement for testimony rather than comments will allow for a more developed record, the ability of parties to cross-examine witnesses under oath, and the potential for an evidentiary hearing. These procedural requirements will allow for the development of a sufficient evidentiary record to support changes to the utilities' BSCs and residential rates in a final decision").

[31] R.26-04-009, *SCE's Opening Comments on OIR on California Advanced Electric Rate Design*, p. 15 (May 11, 2026) ("SCE agrees . . . that evidentiary hearings may be necessary" and that "formal, sworn party testimony may in many cases be more appropriate in this proceeding as compared to relying only on the submission of party comments, to inform a more robust evidentiary record"); *see also id.*, pp. 4-7 (providing for hearings in its proposed schedules for the proceeding tracks that it proposed should take on BSC issues).

factual dispute in a successor rulemaking.[32] The Scoping Ruling in this case confirmed that this exact issue is within scope for Track 2.[33]

The decision around how to design the next version of the BSC will turn on several material factual questions likely to be disputed in this case, including:

- What categories of distribution costs are properly classified as fixed?
- Are high fixed charges likely to result in increases in summer net peak demand? If so, at what level of fixed charges is this effect likely to occur?
- Are high fixed charges likely to lead to higher rates overall long-term? If so, at what level of fixed charges is this effect likely to occur?
- Are high fixed charges likely to lead to environmental harm? If so, at what level of fixed charges is this effect likely to occur?
- What are the likely customer bill impacts from raising fixed charges, and how do they compare to the customer bill impacts likely to result from other residential rate design approaches?
- What are the likely customer bill impacts of adopting alternative income verification approaches for the BSC?
- What is the likely impact of increased fixed charges on electrification?

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[32] *See* D.24-05-028, pp. 68-69.

[33] Scoping Ruling, p. 4 ("6. Should further elements of a utility's authorized distribution revenue requirement, including embedded customer costs and wildfire-related costs, be classified as fixed costs for residential customers? . . . If so, what rate designs, such as fixed charges or demand/capacity-differentiated charges, should the Commission consider for the recovery of these costs for residential customers?").

The Track 2 comments-only schedule does not provide an adequate opportunity to develop and test the evidence necessary to resolve these questions. To address these questions, parties including AEU may seek to introduce evidence during evidentiary hearings in the form of utility accounting records and cost-of-service studies, bill impact analyses across different customer groups and customer usage profiles, comparative jurisdictional studies, and econometric analyses concerning whether and to what extent changes in fixed charges affect customer behavior, utility costs, and other outcomes. AEU is still developing its litigation positions in Track 2, but among other things, it intends to demonstrate during hearings that high fixed charges are likely to reduce incentives for load flexibility, thus increasing utility infrastructure investments and the overall costs borne by ratepayers.

As the Scoping Ruling's conclusion that there are no disputed issues of material fact in Track 2 of this proceeding is unreasonable and inconsistent with party positions in the instant docket as well as with the record of R.22-07-005, the Commission should indicate in its revised Scoping Ruling that hearings will likely be necessary in Track 2.

While the Scoping Ruling dismisses the idea that hearings could be necessary in Track 2, it does set forth the items to be addressed in any motion requesting hearings for Track 1.[34] Aside from requesting that the moving party identify the material issues of disputed fact, the evidence the party proposes to introduce at hearing, and what the party would seek to demonstrate through hearing (each discussed above), the Scoping Ruling also requests that the moving party provide a proposed schedule for conducting the hearing. AEU respectfully submits that the following would constitute a reasonable revised schedule for Track 2 of this proceeding:

[34] Scoping Ruling, p. 6.

Proposed Track 2 Schedule

Event	Date
Proposed decision on consultant services, issued	Q4 2026
Commission decision on consultant services, issued	No sooner than 30 days after PD
Ruling with staff proposal on residential rates that considers the findings from the BSC evaluation report	June 2027
Workshop on staff proposal, held	20 days after the staff proposal ruling
Opening testimony on staff proposal and any alternative party proposals, served	60 days after the staff proposal ruling
Reply testimony on staff proposal and any alternative party proposals, served	30 days after opening testimony
Evidentiary hearings	30 days after reply testimony
Opening Briefs	30 days after the last day of evidentiary hearings
Reply Briefs	20 days after Opening Briefs
Proposed decision on residential rates, issued	Q1/Q2 2028
Commission decision, issued	No sooner than 30 days after PD

III. CONCLUSION

For the foregoing reasons, AEU respectfully requests that the Commission grant this Motion and issue a ruling modifying its Scoping Ruling as described herein.

Respectfully submitted,

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