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Decision 20-11-030 November 19, 2020

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

Application of Southern California Edison  
Company (U338E) for Approval of Its  
Clean Energy Optimization Pilot.

Application 18-05-015

**DECISION MODIFYING DECISION 19-04-010**

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ATTACHMENT A - Amended Settlement Agreement Terms

## DECISION MODIFYING DECISION 19-04-010

### Summary

This decision modifies Decision 19-04-010 by adopting the “Amended Settlement Agreement Terms Pursuant to Coronavirus 2019 (COVID-19),” which account for the impacts of the COVID-19 pandemic on the Clean Energy Optimization Pilot.

This proceeding is closed.

### 1. Factual Background

The purpose of the Clean Energy Optimization Pilot (CEOP or Pilot) is to develop a streamlined, technology neutral method to calculate Greenhouse Gas (GHG) reductions from energy efficiency and clean energy measures, then reward reductions, if any, using a pay for performance framework. The California Public Utilities Commission (Commission) approved the CEOP in Decision (D.) 19-04-010, adopting a settlement agreement from all active parties to the proceeding, which included Southern California Edison Company (SCE), Public Advocates Office of the California Public Utilities Commission (Cal Advocates), Natural Resources Defense Council, University of California (UC), and California State University (CSU) (collectively, the “Settling Parties”).

In May 2019, SCE executed contracts with UC and CSU (the “Pilot Participants”) to begin the Pilot. The Pilot started in July 2019.<sup>1</sup> The first stakeholder engagement meeting was held in October 2019.<sup>2</sup> At the time, the UC and CSU system held regular in-person classes on all of their campuses.

On March 4, 2020, Governor Newsom declared a statewide state of emergency due to the Coronavirus Disease 2019 (COVID-19) pandemic. On

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<sup>1</sup> PFM at 2.

<sup>2</sup> *Ibid.*

March 19, 2020, the Governor issued a statewide Stay-at-Home Order, which resulted in the CSU and UC campuses' transition from in-person to virtual instruction.<sup>3</sup> A significant portion of education buildings and on-campus housing facilities<sup>4</sup> were depopulated on CSU and UC campuses.<sup>5</sup> On May 8, 2020, the Settling Parties met and agreed on modified terms to the Settlement Agreement adopted in D.19-04-010 to address the impact of COVID-19 pandemic impacts on the CEOP (Amended Settlement Agreement Terms).<sup>6</sup>

## **2. Procedural Background**

On August 17, 2020, SCE filed a Petition for Modification (PFM) of D.19-04-010. No parties filed protests or responses to the PFM. After due consideration, this matter was deemed submitted on October 1, 2020.

## **3. The PFM Complies with Rule 16.4(d)<sup>7</sup>**

Rule 16.4(d) requires petitioners to file and serve PFMs within one year of the effective date of a decision. If more than one-year elapses before a petitioner files a PFM, the petitioner must explain why the petition could not have been presented within one year of the effective date of submission.

SCE explains that it initiated the CEOP with the Pilot Participants following the approval of the CEOP on April 25, 2019. However, the statewide emergency due to the COVID-19 substantially impacted the effectiveness of the CEOP more than one year after D.19-04-010 issued.

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<sup>3</sup> *Ibid.*

<sup>4</sup> As part of the shelter in place order, over 50% of UC classroom spaces and over 70% of housing facilities were shut down. CSU campus housing was also depopulated and all campus instruction was moved online.

<sup>5</sup> PFM at 2-3.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> All references to "Rule" or "Rules" in this decision refer to the Commission's Rules of Practice and Procedure.

We agree that the COVID-19 pandemic was an unforeseen circumstance that justified modification of the CEOP. Accordingly, this petition is deemed justified and in compliance with Rule 16.4(d).

#### **4. The Amended Settlement Agreement Terms are Adopted**

The Settling Parties request approval of the Amended Settlement Agreement Terms, which address changed energy use patterns resulting from the COVID-19 pandemic on the CEOP. The Amended Settlement Agreement Terms propose the following changes to the Settlement Agreement adopted in D.19-04-010:<sup>8</sup>

1. Shorten the first year of the CEOP performance evaluation period from 12 to 9 months (July 2019 to March 2020);
2. Pause the CEOP effective April 1, 2020 and starts the second year on the first full month upon which all campuses participating in the CEOP meet the “Normal Operations”<sup>9</sup> metric;
3. Modify the performance comparison for payment methodology by:
  - a. Comparing the baseline and performance period at monthly intervals rather than annually (e.g., comparing January 2021- January 2022 performance rather than 2021 to 2022 performance), where the baseline month must be the lowest “Normal Operation” month to date.
  - b. Normalize for weather and square footage on a monthly rather than an annual basis;
  - c. Adopt a sub-optimal performance modification, whereby any such pilot year when the Pilot Participant’s cumulative performance month to baseline month comparisons equal a

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<sup>8</sup> PFM at A1 - A5.

<sup>9</sup> “Normal Operations” are based on two metrics: 1) the Governor lifts the stay at home order for Stage 3 (higher risk workplaces) of the State’s Resilience Roadmap; and 2) Chancellor or President of the University system determines that facilities will be able to provide greater than 50 percent in-person instruction and operations for the CEOP to resume.

net increase in GHG emissions for the year, the performance payments for Pilot Participants in a subsequent year for non-duplicative GHG emission reduction are paid 50% upfront and 50% the following year if savings persisted another year; and

- d. Requiring the evaluation consultant to verify the performance payment calculations using the modified performance payment methodology above.
4. Add two analyses of the evaluation method: 1) analysis of and report on COVID-19 impacts on the Pilot and an analysis of the proposed modifications to inform future program design; and 2) recommendations for modifications of future program design to insulate the Pilot against unforeseen circumstances such as the COVID-19 pandemic;
5. Adjust the schedule and reporting deadlines for the Pilot; and
6. Allow SCE to request further modifications to the CEOP and/or inform the Commission of any unforeseen impact or disruption by Tier 1 advice letter submitted to the Commission's Energy Division.

In evaluating the Amended Settlement Agreement Terms, the Commission is guided by Rule 12.1(d). The Commission historically favored settlement agreements as a means of resolving contested issues where the settlement agreement is reasonable in light of the record, consistent with the law and in the public interest.

The Commission favors settlements that are fair and reasonable in light of the record as a whole. The record in this proceeding consists of the 1) Application, the 2) Amended Settlement Agreement Terms pursuant to COVID-19, and 3) declarations from the Settling Parties in support of the PFM. The record discusses the impact of the COVID-19 pandemic on the energy consumption of the Pilot Participants' campuses. The Amended Settlement Agreement Terms provide discrete proposals which reasonably address the

impacts of the COVID-19 pandemic on the Pilot. Accordingly, we find the Amended Settlement Agreement Terms are reasonable in light of the record in this proceeding.

The Amended Settlement Agreement Terms do not contravene any statutory provisions or prior Commission decisions. For example, no statute mandates the calculation of specific baseline measurements or sunsets the Pilots' operation. Accordingly, we find the Amended Settlement Agreement Terms are consistent with the law.

The Amended Settlement Agreement Terms are in the public interest. Prior to the PFM's filing, the Commission had not yet considered the impacts of the COVID-19 pandemic on the CEOP. As the PFM explains, the campus building and housing closures resulting from the COVID-19 pandemic in 2020 drastically reduce energy consumption for the Pilot Participants in 2020. Without adjustment to the pilot energy use baseline and the performance period of the CEOP, SCE's performance payments to the Pilot Participants "would be substantially higher than expected and for measurable GHG emissions reduction that are not a direct result of campus interventions."<sup>10</sup> For example, the Pilot Participant's zero energy usage for three months results in a performance payment of \$26 million in just one Pilot year.<sup>11</sup> Given that the total budget for the operation of the CEOP over four years is \$20.4 million, failure to account for the impacts of the COVID-19 shelter-in-place and other public health orders impermissibly confounds the intent of the Pilot. With the Commission's adoption of the Amended Settlement Agreement Terms, this issue is considered

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<sup>10</sup> PFM at 3.

<sup>11</sup> *Id.* at 4.

and resolved in a manner that avoids incentive payments in the CEOP unrelated to the Pilot Participants' GHG emissions reductions measures.

The Amended Settlement Agreement Terms also promote the public interest by avoiding costly and protracted litigation. They conserve the resources of the parties by avoiding the need for evidentiary hearings and the preparation of briefs. They also command the unanimous sponsorship of all Settling Parties to Application 18-05-015.

The PFM's request for Commission approval of the Amended Settlement Agreement Terms is granted. The Amended Settlement Agreement Terms do not constitute a precedent regarding any principle or issue in this proceeding or any future proceeding.

#### **5. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

#### **6. Assignment of Proceeding**

Marybel Batjer is the assigned Commissioner and Zita Kline is the assigned Administrative Law Judge in this proceeding.

#### **Findings of Fact**

1. The Commission approved the CEOP in D.19-04-010.
2. SCE executed contracts with the Pilot Participants in May 2019.
3. The Pilot Participants initiated the CEOP in July 2019.
4. On March 4, 2020, Governor Newsom declared a statewide Stay-at-Home Order, which resulted in depopulation of campus buildings and housing as the Pilot Participants switched from in-person to virtual learning.



5. On May 8, 2020, the Settling Parties met and agreed on Amended Settlement Agreement Terms, which address the impact of the COVID-19 pandemic on the CEOP.

6. SCE filed this PFM more than one year after issuance of D.19-04-010.

### **Conclusions of Law**

1. Rule 1.4(d) requires petitioners to file and serve PFMs within one year of the effective date of a decision.

2. The COVID-19 pandemic was an unforeseen circumstance that justifies modification of D.19-04-010 more than one year after it issued.

3. The Amended Settlement Agreement Terms are reasonable in light of the record.

4. The Amended Settlement Agreement Terms are consistent with the law.

5. The Amended Settlement Agreement Terms are in the public interest.

6. The Amended Settlement Agreement Terms resolve questions related to the impacts of the COVID-19 pandemic on the effectiveness of incentive payments in the CEOP.

7. The Amended Settlement Agreement Terms proposed by the Settling Parties meet the requirements of Rule 12.

8. The Amended Settlement Agreement Terms should be adopted.

9. This proceeding should be closed.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Clean Energy Optimization Pilot is approved, as modified by the Settlement Agreement in Decision 19-04-010 and by the Amended Settlement Agreement Terms, included as Attachment A of this decision.

2. Southern California Edison Company's annual, mid-term, and final written reports to the California Public Utilities Commission's Energy Division shall include evaluation of Coronavirus Disease 2019 (COVID-19) impacts on the Clean Energy Optimization Pilot, including any recommendations for future modifications based on the analyses performed on the COVID-19 impacts.

3. Application 18-05-015 is closed.

This order is effective today.

Dated November 19, 2020, at San Francisco, California.

MARYBEL BATJER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners