

Decision 23-02-002 February 2, 2023

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

Order Instituting Rulemaking  
Concerning Energy Efficiency Rolling  
Portfolios, Policies, Programs,  
Evaluation, and Related Issues.

Rulemaking 13-11-005

**DECISION ADDRESSING ENERGY EFFICIENCY  
THIRD-PARTY PROCESSES AND OTHER ISSUES**

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**Attachment A** – Modifications to Standard Terms and Conditions

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## **DECISION ADDRESSING ENERGY EFFICIENCY THIRD-PARTY PROCESSES AND OTHER ISSUES**

### **Summary**

This decision addresses several topics important to the ongoing success of the Commission's energy efficiency portfolio, including:

- Improvements to the third-party solicitation process including the following:
  - Removing requirements for performance assurances as a starting point for contract negotiation;
  - Requiring cybersecurity insurance only when deemed necessary;
  - Removing the requirement for a two-stage solicitation process;
  - Updating the definition of diverse business enterprise to include businesses owned by persons with disabilities;
  - Updating terms and conditions to reflect the Total System Benefit metric;
  - Adopting a confidentiality matrix;
  - Clarifying financial conflict of interest rules for procurement review group members;
  - Requiring a consistent methodology to account for administrative costs associated with third-party contracts;
  - Requiring annual instead of semi-annual workshops for third-party solicitation stakeholders;
  - Allowing the use of strategic energy management approaches beyond the industrial sector;
  - Improving and clarifying governance and oversight of the Commission's database tools;
  - Addressing ongoing use of the California Analysis Tool for Locational Energy Assessment project; and

- Adopting data sharing requirements for Commission-authorized energy efficiency programs.

This proceeding remains open.

## **1. Background**

### **1.1. Procedural Background**

On July 15, 2022, an Administrative Law Judge's (ALJ's) ruling was issued seeking input from parties on the issues addressed in this decision. Comments were due by August 9, 2022 and reply comments by August 19, 2022.

The following parties filed timely comments in response to the July 15, 2022 ALJ ruling: Association of Bay Area Governments (ABA) on behalf of the Bay Area Regional Energy Network (BayREN) and the County of Ventura on behalf of Tri-County REN (3CREN), jointly; Public Advocates Office (Cal Advocates); California Efficiency + Demand Management Council (CEDMC); Western Riverside Council of Governments (WRCOG) on behalf of Inland REN (I-REN); Local Government Sustainable Energy Coalition (LGSEC); Marin Clean Energy (MCE); Pacific Gas and Electric Company (PG&E); Recurve Analytics, Inc. (Recurve); Redwood Coast Energy Authority (RCEA); San Joaquin Valley Clean Energy Organization (SJVCEO); Small Business Utility Advocates (SBUA); San Diego Gas & Electric Company (SDG&E); Southern California Edison Company (SCE); and the Southern California REN (SoCalREN).

The following parties timely filed reply comments in response to the July 15, 2022 ALJ ruling: BayREN and 3CREN, jointly; I-REN; LGSEC; PG&E; RCEA; SCE; SBUA; SDG&E; and SoCalGas.

### **1.2. Factual Background**

This Section briefly summarizes the background and current status of the topics included in this decision.

### **1.2.1. Third-Party Solicitation Process**

In January 2018, the Commission adopted Decision (D) 18-01-004, which established a two-stage solicitation approach to soliciting third-party program design and implementation services as part of the energy efficiency portfolio. The Commission also required a set of standard and modifiable contract terms and conditions, established additional steps for the development and approval of third-party contracts, and reserved the right to modify the process in the future.

Since that time, numerous solicitations have been held, the investor-owned utilities (IOUs) have filed semi-annual reports of feedback from the independent evaluators (IEs), Commission staff have hosted semi-annual public stakeholder workshops, an independent process evaluation has been conducted, and stakeholders have offered a great deal of feedback on the process.

The July 15, 2022 ALJ ruling had an attachment of a staff proposal that contained a number of recommendations for changes and improvements to the third-party solicitation process. The July 15, 2022 ALJ ruling sought parties' detailed feedback on the staff proposal and a series of questions.

### **1.2.2. Strategic Energy Management**

In D.16-08-019, the Commission identified strategic energy management (SEM) as a long-term "holistic, whole-facility approach that uses normalized metered energy consumption and a dynamic baseline model to determine savings from all program activities at the facility, including capital projects, maintenance and operations and retro-commissioning custom calculated projects." According to D.16-08-019, "the SEM approach leads to capture of additional savings from behavioral, retro-commissioning, and operational activities, as well as identification of bigger opportunities and tracking of projects planned by the customer."

D.16-08-019 also allowed for a net-to-gross ratio (NTGR) of 1.0 to be applied to all projects resulting from statewide industrial SEM programs adhering to a very specific program design that ensures customer participation, education, and tracking of program/project performance. In addition, while there is no specific guidance from the Commission on what effective useful life (EUL) to use for SEM, the implied EUL of 5 years has historically been used based on the Commission-issued Potential and Goals study from 2018 (*see* D.17-09-025).

Due to the program's popularity and the NTGR application, there has been stakeholder interest in expanding SEM to other non-industrial market sectors such as commercial, agricultural, and public sector, including local programs. However, prior Commission guidance only allows the program design and the related NTGR allowance for statewide industrial SEM programs.

Recently, several program administrators requested to expand the application of SEM programs. SCE, in its opening comments to the proposed decision on summer reliability (which became D.21-12-011), requested clarification from the Commission on whether the SEM program could be expanded to non-industrial sectors. D.21-12-011 made no change to the rules at that time but encouraged SCE to propose this expanded approach in its portfolio application for a full vetting and discussion. Since that time, several advice letters have been submitted and approved that requested SEM expansion.

Due to prior SEM guidance requiring adherence to the statewide industrial SEM guidebooks to apply the NTGR of 1.0, Commission staff provided guidance that the industrial sector guidebooks be emulated for consideration of SEM program expansion into non-industrial sectors seeking to apply the related NTGR and EUL. The existing guidebooks were written to be rigorous in terms of



required industrial customer participation and program tracking to justify the NTGR of 1.0. Because these guidebooks were developed specifically for the industrial sector, they may not be exactly relevant for other sectors. As the SEM guidebooks are considered living documents, the SEM statewide program administrators have revised the previous Statewide Industrial SEM Guidebooks to include more flexibility to be applicable over a larger audience, even if they may not consider specific non-industrial sector characteristics. These revised guidebooks are posted at the following links:

<https://pda.energydataweb.com/#!/documents/2647/view>

<https://pda.energydataweb.com/#!/documents/2648/view>

The July 15, 2022 ALJ Ruling asked parties to respond to several questions about how the Commission should modify its policy guidance on the use of SEM.

### **1.2.3. Database Tools**

The Commission's Energy Division staff manages a suite of energy efficiency reporting database resources known as the California Energy and Data Reporting System (CEDARS) and various energy efficiency calculators, namely the Cost-Effectiveness Tool (CET).<sup>1</sup> The scope of managing these resources includes funding and managing a contract for database administration and website maintenance, software development, and database and specification updates. Commission staff coordinates a bimonthly Project Coordination Group (PCG) meeting with the program administrators to discuss reporting updates,

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<sup>1</sup> The CEDARS system includes various other resources and calculators that require investor-owned utility (IOU) support, such as: the Public Documents Area (PDA), Water-Energy Calculator, Fuel Substitution Calculator, Refrigerant Calculator, Water Heater Calculator, and any other database system of calculators required to support energy efficiency policy and implementation.

determine CEDARS and CET development priorities, and discuss new policy issues that relate to reporting and data management. In their new business plan and portfolio applications (Application (A.) 22-02-005 et. al.), both PG&E and MCE recommended that the PCG evolve into a governance committee modeled after the California Technical Forum implementation of the California electronic technical reference manual.

The governance committee would be comprised of the program administrators, Commission staff, and other stakeholders on an ad hoc basis, and its main responsibilities would be to jointly support the energy efficiency reporting systems through funding and contracting, determine annual development priorities and system update timelines, and provide a forum for Rulemaking (R.) 13-11-005 informal stakeholder input and participation. The governance committee would engage a coordinator to facilitate its meetings, hire and work with software developers, provide project management, and report to governance committee members on progress. PG&E proposed a budget set-aside for these activities from its evaluation, measurement, and verification budget.

In response to the July 15, 2022 ALJ ruling, parties were invited to respond to this concept, as well as a set of related questions.

#### **1.2.4. CATALENA Project**

D.18-05-041, which authorized the 2018-2025 energy efficiency business plans, directed the IOUs to select a statewide lead to oversee development of a statewide energy use database called the California Analysis Tool for Locational Energy Assessment (CATALENA) by a third-party implementer.<sup>2</sup> Specifically, Ordering Paragraph 32 of D.18-05-041 states:

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<sup>2</sup> See D.18-05-041 at 150.

As part of their local government and public sector implementation plans, the utility program administrators shall select among themselves a lead to oversee statewide deployment of the Energy Atlas and competitively solicit a third party to implement the deployment, maintain data quality, consistency and security, continue development of the Energy Atlas' capabilities, and encourage and support local governments that choose to participate. Commission staff is authorized to oversee the procurement process and implementation of the Energy Atlas statewide deployment and ongoing management. The utility program administrators shall allocate up to \$2 million to expand the Energy Atlas, and include annual Energy Atlas management and maintenance costs in their annual budget advice letters proportionally according to relevant energy efficiency program budgets.

The Energy Atlas referred to in D.18-05-041 is a specific database tool developed by the University of California, Los Angeles (UCLA) for most counties in southern California. The Energy Atlas consists of two databases, one being a public interface with aggregated, privacy-protected data tables, which is made possible by the other, confidential, geospatial relational database that is accessible (in disaggregated form) only to qualifying researchers under binding non-disclosure agreements.<sup>3</sup> The data contained in the geospatial relational database includes disaggregated demand data, as defined in the California Energy Commission's (CEC) Title 20, which constitutes "covered information" as defined by D.15-06-016.<sup>4</sup>

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<sup>3</sup> See "Data Overview" at the following link: <https://www.energyatlas.ucla.edu/methods>.

<sup>4</sup> California Code of Regulations Title 20, section 1353, accessible at [https://govt.westlaw.com/calregs/Document/IC4F7B34207E64741B67D72B9725B221A?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/IC4F7B34207E64741B67D72B9725B221A?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

SCE was selected as the statewide lead for expanding the Energy Atlas to statewide use. This expanded tool is referred to as the California Analysis Tool for Locational Energy Assessment (CATALENA). D.18-05-041 is clear that the Commission's intent for the CATALENA tool is to expand the Energy Atlas to statewide use, including both the public-facing database and the back-end geospatial relational database, and making disaggregated demand data accessible to qualifying users.

#### **1.2.5. Data Sharing**

On June 3, 2022, 3CREN filed a motion requesting that the Commission direct the IOUs in 3CREN's geographic area -- PG&E, SCE, and SoCalGas -- to provide certain program participant and non-participant data to 3C-REN and/or its program implementer(s) so that 3CREN can operate its population normalized meter energy consumption (NMEC) residential single-family program.<sup>5</sup>

On or before June 20, 2022, CEDMC; PG&E; BayREN, I-REN, LGSEC, MCE, and Rural Regional Energy Network (the Joint Parties); Recurve; SCE jointly with SoCalGas (the Joint Utilities); and SoCalREN filed responses to the 3C-REN motion. All parties except the Joint Utilities and PG&E supported granting 3C-REN's motion. CEDMC, the Joint Parties, and Recurve argued that this data should already be provided to any Community Choice Aggregator or Regional Energy Network (REN). CEDMC added that this motion should apply more broadly to all RENs. The Joint Utilities and PG&E opposed granting the motion's request but differed on what they believe is required for the IOUs to share the requested data with 3C-REN.

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<sup>5</sup> The program, known as the Single-Family Home program, was approved on January 3, 2022 with the approval of 3C-REN's advice letters 8-E/7-G and 8-E-A/7-G-A.

The Joint Utilities requested permission to file a reply to PG&E's response, because the Joint Utilities disagreed with PG&E's suggestion that a contract absent Commission authorization can establish a primary purpose; a June 22, 2022 e-mail ruling invited all parties to address this issue.<sup>6</sup>

On June 30, 2022, 3C-REN filed a reply and on July 1, 2022, CEDMC, PG&E, the Joint Utilities, and Recurve all filed responses to the June 22, 2022, e-mail ruling. In its reply, 3C-REN makes several points. First, 3C-REN states that REN energy efficiency programs are a primary purpose, that both participant and non-participant data is necessary to implement NMEC programs, and that streamlined data access is essential to run effective energy efficiency programs. Second, they address the Joint Utilities' response, stating that as a government entity they are already authorized by the Commission to receive the requested data according to D.11-07-056. Next, they state that the cost-sharing agreement with the IOUs for the sharing of this data should be addressed in A.22-02-005 et. al. In their reply to PG&E's response, 3C-REN states concerns with the approach suggested, that PG&E and 3C-REN could update their contract to provide the requested data. 3C-REN notes that they have pursued this approach for months with the IOUs and that the negotiations have not been fruitful. They add that if the Commission seeks to pursue the contractual approach, 3C-REN respectfully requests that they work with Commission staff – not the three IOUs, who do not share consistent views – to arrive at a reasonable approach to data minimization and protection that will allow 3C-REN's NMEC program to operate.

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<sup>6</sup> "Primary purpose" is a Commission-established designation that describes purposes for which certain data can be used. (See D.11-07-056 at 50.)

In reply, PG&E reiterated that they believe they have sufficient authorization to negotiate an updated program agreement with 3C-REN, with the understanding that such a contract would create primary purpose – thus, allowing for the sharing of confidential customer data under privacy rules and laws.

The Joint Utilities disagree with PG&E that a data-sharing agreement could be a solution to share the requested data with 3C-REN and state that only the Commission could direct them to share the data requested by 3C-REN's motion. Recurve suggests that Commission direction is not necessary for the IOUs to share the requested data with 3C-REN, but suggests that Commission direction would provide clarity. CEDMC agrees with Recurve and added that the data that was requested in the 3C-REN motion should be provided to non-IOUs and recommends that this requirement be extended to implementers as well.

## **2. Third-Party Solicitation Process**

The July 15, 2022 ALJ ruling included an attachment with a staff proposal for a significant number of changes to the required process for third-party solicitations, which are required to comprise 60 percent of the total budget of the portfolio administrators, according to D.18-01-004. The July 15, 2022 ALJ ruling included over 70 questions related to specific proposals for improvements to the third-party solicitation process.

This decision does not address every single aspect of the staff proposal or the parties' comments on every detail. Rather, in this decision we prioritize high-impact changes that we can make now to improve the third-party solicitation process, without addressing every single aspect that could use improvement.

To select the items to prioritize, we have used the following basic guiding principles:

- Reducing unnecessary burdens to bidders, IOUs, Commission staff, and ratepayers;
- Managing risks to the IOUs and bidders and mitigating risks to ratepayers for contracts that fail to realize forecasted cost-effectiveness and/or energy savings benefits;
- Addressing key contracting, process, policy, and implementation issues where we have a high degree of confidence that the changes will improve the process;
- Taking into consideration the major changes that have taken place in energy efficiency policy through recent decisions addressing portfolio segmentation (D.21-05-031), the third-party solicitation process (D.16-08-019 and D.18-01-004), workforce and third-party terms and conditions (D.18-10-008), and local government partnership bidders (D.19-08-006); and
- Deferring other issues, where we are less confident of the immediate beneficial impacts, to the current application proceeding (A.22-02-005 et. al.) or to later in this rulemaking.

Using the above principles, we have identified the following key issues to be addressed in this decision:

- Performance assurances (securities);
- Cybersecurity insurance;
- Two-stage solicitation process;
- Relationship to Market Access Program (MAP);
- Diverse Business Enterprise definitions;
- Update to include Total System Benefits (TSB);
- Confidentiality;

- Contract extensions;
- Procurement Review Group (PRG) conflicts of interest;
- Applicability and timing of these third-party changes and contract amendment advice letters;
- Standardizing accounting methods; and
- Third-party stakeholder workshops.

Attachment A to this decision also contains a redline modification to the previously-adopted standard contract terms and conditions from D.18-10-008.

## **2.1. Performance Assurances (Securities)**

The current third-party standard terms and conditions allow the IOUs to require performance assurances, which some IOUs have interpreted to allow them to make this request at any point in the implementation process. The standard term currently has a final sentence in the section of the standard terms called “Performance Assurance; Bonding:”

“Implementer shall also maintain any payment and/or performances assurances as may be required by Company agreed to during the performance of the Services.”

The staff proposal asked parties to weigh in on whether this sentence should be removed. The staff proposal also asked parties to weigh in on the concept of setting an upper limit on the amount of performance assurances required, such as 3 percent of the awarded contract budget.

In addition, the July 15, 2022 ALJ ruling asked about the appropriate disposition of any funds collected against a performance security.

### **2.1.1. Comments of Parties**

CEDMC states that the burden of this performance security provision can create major delays in compensation to the third parties, while needing to operate their normal business functions, holding cash reserves, and reserving lines of credit. CEDMC is also concerned that the burden is inequitable to small



and disadvantaged business entities. They also state this requirement is unnecessary when pay-for-performance provisions are in place.

CEDMC also describes cascading burdens, starting with driving a regular risk project into high risk, discouraging implementers from bidding, diminishing the breadth, quality, and innovation of bidders. Overall, CEDMC suggests the result is higher cost to ratepayers.

SJVCEO, SBUA, and Recurve generally agree with CEDMC that this provision limits the bidder pool and negatively impacts bidders, the market, and ratepayers.

PG&E agrees that smaller companies or those with limited resources would be more impacted, and states that it does not currently require upfront payment or cash deposit from implementers, though would like to retain the flexibility to do so. SoCalGas also does not require upfront payment or collateral. Separately, PG&E suggests the removal of Table 2 of the modifiable terms and conditions regarding payment terms.

SCE claims that this provision does not create a burden, because bidders can price the costs into their ultimate bid, and as long as they perform to their contract, they will recover the performance assurances over time. SCE states that the reason they require collateral is that it creates a financial incentive to perform, eliminates a need to perform a credit review (thus enabling equal treatment of bidders and an inclusive marketplace), and that there is no incremental cost to the implementer if they perform over the life of the contract.

SDG&E supports striking the sentence with the understanding that parties can negotiate requirements prior to contract execution, as opposed to during the contract term. CEDMC, SBUA, Cal Advocates, and SJVCEO all strongly support

striking the sentence. PG&E, SoCalGas, and SCE do not, since the sentence is permissive and flexible currently.

Most parties did not favor setting an upper limit, like 3 percent, on the amount of performance assurances allowed. None of the IOUs supported this concept, and CEDMC would prefer to eliminate the requirements altogether. SBUA supported an upper limit, but only when required and would also prefer other alternatives, such as credit insurance, purchase order financing, or invoice factoring.

On the issue of the disposition of any performance securities collected, SDG&E believes that those funds should be used to cover losses or damages and should be added to the portfolio administrator's energy efficiency budget. PG&E agrees and states that the funds should be allocated to other, successful programs to offset underperformance impacts.

SCE suggests that such funds go into the energy efficiency balancing account and be used to replace the implementer and reimburse the IOU for damages/costs. Any amount in excess should, according to SCE, be returned to ratepayers in the next available proceeding. SCE further proposes that the IOUs account for the treatment of any collected performance securities or other damages from third-party implementers in relevant Commission filings or reports.

### **2.1.2. Discussion**

The most important clarification we make to this provision is to make it clear that performance assurances shall not be added unilaterally after the contract has been signed and during the implementation period. The implementers must be aware of the performance assurance requirements when the contract is signed, before the beginning of the contract performance period,

and not have those terms imposed during the performance of their services. This provides certainty of the financial burden up front and allows implementers to price the cost into their ultimate payment provisions under the contract.

If an IOU is to require performance assurances, it must negotiate this provision up front and include the provision in the contract prior to execution. In essence, this makes performance assurances a modifiable contract term, and not a standard contract term. Thus, we modify the standard contract terms to remove the sentence in question entirely.

Further, the default starting point for negotiation should be that no performance securities are required. Performance assurances or securities are most appropriate for higher-risk contracts. Thus, if an IOU believes that performance assurances are necessary in a particular circumstance, the IOU is required to provide to the PRG and the IE for review and comment its analysis of the specific risk the contract presents to the ratepayers, and explain how the performance security is appropriate to the contract size, scope, and associated risks. These are the factors proposed by SDG&E and we agree with them. Through modifications to Attachment B under Section "E: Payment Schedule and Terms," we clarify that performance assurance is a modifiable term and further outline the process steps the IOU and bidder consider in negotiating such a term.

With respect to any performance assurances that are collected, we agree with the IOUs that the funds should be returned to the IOU's energy efficiency budget. Further, we will require that the IOUs describe any such funds and their disposition in their energy efficiency Annual Reports. Should a program be closed and require an advice letter to do so, any relevant performance assurances should also be disclosed in the associated advice letter.

Finally, we agree with PG&E's proposal to strike Table 2 in Attachment B, the modifiable terms and conditions, with potential payment schedules and terms, as the table misrepresents the default starting point which should now be without performance assurances.

## **2.2. Cybersecurity Insurance**

The July 15, 2022 ALJ ruling asked parties to weigh in on whether there are specific insurance requirements that are difficult and/or especially costly to obtain, and whether the Commission should take some action to mitigate the challenge.

### **2.2.1. Comments of Parties**

PG&E offers that cybersecurity insurance can be costly and difficult to obtain due to the increasing demands in the cyber claims market. They state that California consumer privacy laws and associated fines add additional levels of complexity and cost. PG&E states that implementers can reduce these costs by having robust cybersecurity protocols and comparing insurance company offerings. SoCalGas agrees that the insurance is costly, but does not have any recommendations for steps the Commission can take.

SCE argues that the cost of insurance can be priced into the implementer's bid and does not necessarily present a barrier. SCE also does not support the Commission taking any action even if an insurance is especially costly, because this is the means that the portfolio administrators can use to protect consumers.

CEDMC recommends eliminating cybersecurity insurance and instead pursuing "uniform procurement requirements to adopt industry standards for cyber- and data-security." CEDMC argues that cybersecurity insurance increases procurement costs without any assurances of greater security. CEDMC further describes the process for obtaining cybersecurity insurance, which involves

insurance companies' surveys to obtain detailed information on the implementer's systems, as well as inquiries into the implementer's system integration with IOU information technology and operations technology systems.

Recurve agrees that cybersecurity insurance is costly, especially at the limits currently required by the IOUs, which is often a \$10 million aggregate limit costing roughly \$60-80,000 per year. Recurve recommends that vendors should be able to expect reasonable liability and insurance requirements based on the nature of the work, their capabilities to securely handle data, and the public interest.

#### **2.2.2. Discussion**

As with the performance assurances discussed in the previous section, with respect to cybersecurity insurance requirements, we will require, at a minimum, that expectations about the insurance requirements be disclosed as part of the solicitations process by the IOUs to bidders. These types of insurance policies are based on highly customized assessments of risks, depending on the particular services being performed. In addition, it is possible that some risks may be mitigated by adjusting program designs up front, in addition to or instead of requiring costly and complex cybersecurity insurance.

To address this issue further, we will require that any IOU proposing to require cybersecurity insurance as part of a future solicitation, to disclose and discuss the proposed requirements with the PRG prior to a solicitation being released to market and when the final requirements are being negotiated based on the specific program design, and explain to the PRG the reasons for its inclusion of these insurance requirements. We request that the PRGs actively consider the impacts of cybersecurity insurance requirements prior to individual

solicitations being released to market and throughout the solicitation timeline, including the final, negotiated insurance requirements.

In general, insurance requirements for third-party energy efficiency programs should be tailored by the IOU based on real risks assessed given the actual scope of work to be performed. Further, general insurance requirements should be disclosed up front to the bidder community when a solicitation is initiated, but may be refined during the contract negotiations, depending on the scope of work, detailed program design, and assessed risk profile of the counterparties to the contract. As noted above with respect to cybersecurity insurance requirements, all insurance requirements should be disclosed to the PRGs and IEs should monitor for appropriateness of specific requirements throughout the solicitation timeline. The PRG should review and provide comment on the final, negotiated insurance requirements.

### **2.3. Two-Stage Solicitation Process**

D.18-01-004 required a two-stage solicitation process to be the predominant approach, with the first stage being a request for abstract (RFA) soliciting general program designs and qualifications, followed by a more detailed request for proposal (RFP) stage. The July 15, 2022 ALJ ruling included the staff proposal to remove this requirement ordered in D.18-01-004, in favor of allowing, but not requiring, a two-stage solicitation approach.

In the past several years, many parties have weighed in that the requirement to hold a two-stage solicitation has been causing unnecessary costs and delays in the outsourcing process and limits the flexibility to tailor solicitation timelines based on budget, target market sector, or other factors. Although the IOUs have made progress in reducing the timelines and the

redundancy of questions in each stage, there remains the potential for additional streamlining.

### **2.3.1. Comments of Parties**

SDG&E supports increasing flexibility, including not requiring a two-stage process predominantly. SDG&E states that in solicitations where there are many expected bidders, a two-stage process could be beneficial to help identify advancing proposals. But for solicitations with a narrow market or sector focus, SDG&E feels a one-stage approach is sufficient. SDG&E also agrees that the PRGs should be consulted and provided with an opportunity to weigh in with timely feedback on the proposed approach. PG&E, CEDMC, SBUA, and SCE all agree.

SCE states that this policy change is appropriate now because, as the energy efficiency market matures in its transition to third-party implementers, the IOUs and stakeholders have gained sufficient understanding of the competitive market such that the RFA stage is not necessary to achieve the same results. SCE also requests that this be a permanent option to remove the two stages, not just for emergency reliability purposes.

SoCalGas also generally agrees, including being willing to consult with the PRG, but requests clarification on whether the PRG would have the authority to require the IOUs to use a specific solicitations method or simply advise.

### **2.3.2. Discussion**

There seems to be universal agreement that a two-stage solicitation process is no longer necessary in all circumstances. We agree with those parties who suggest that the third-party marketplace has matured to the point where a blanket requirement is no longer appropriate. Thus, we will remove the

requirement included in D.18-01-004 that a two-stage process be the predominant approach.

In response to SoCalGas' request for clarification, we are not and never have vested the PRG with decision-making authority on the appropriate solicitation process to use, but rather we continue their advisory capacity for the IOUs conducting the solicitations.

However, the IOUs will still be required to submit schedules for solicitations to the PRG, including plans for single- or two-stage solicitations and a rationale for why the chosen approach is appropriate, as well as when the solicitations are expected to launch and conclude.

## **2.4. Relationship to Market Access Program**

The July 15, 2022 ALJ ruling asked parties about the appropriateness of having the MAP approach, which was approved in a limited use case in D.21-12-011, being incorporated into or partially replace the two-stage process for programs that count towards the third-party outsourcing budget requirements. The ruling also asked about how the role of the PRGs and IEs would change if the MAP approach was utilized.

### **2.4.1. Comments of Parties**

PG&E supports opening potential procurement channels to include the market access approach and open all-source solicitations. PG&E generally supports more portfolio administrator flexibility to take the appropriate solicitation approach. PG&E also does not suggest overlapping RFP procurement with a continuous market access process covering the same sector.

CEDMC comments that the market access approach is less administratively burdensome and therefore more attractive for small businesses and DBEs.



SCE supports continuing to examine and evaluate novel procurement models, without unduly infringing on existing third-party contracts.

SBUA and SCE focus on the need to remove the requirement for a two-stage solicitation, which we have already addressed above.

Recurve asks us to correct one assumption in the staff proposal, stating that the market access model performs best when a competitive solicitation is used.

PG&E suggests that the PRG and IE role would be reduced with more emphasis on the market access model, since there will be a large pool of implementers with uniform application of payment and contract terms, and no extensive contract negotiations. Recurve agrees and suggests this could save on oversight costs.

#### **2.4.2. Discussion**

In this area, we find that the use of a procurement model such as the MAP approach is not inherently in conflict with the requirements of D.18-01-004 and could be competitively solicited for, as other third-party energy efficiency programs are. The IOUs are currently free to issue solicitations for an implementer or implementers of a market-access style program under current rules. Such a solicitation can co-exist with the third-party requirements, and we encourage the IOUs to explore the rollout of a market access approach according to the needs of their portfolios. We are specifically referring to the MAP approach overall and not to the rule exemptions included in D.21-12-011 (noted by Cal Advocates in comments on the proposed decision), which are specific to the MAP approved for summer 2022 and 2023 reliability purposes.

Soliciting for a market access implementer, as authorized in D.21-12-011 for summer reliability purposes in 2022 and 2023, differs somewhat from the third-party solicitation process addressed in this decision. However, the third-party solicitation process could be used to select an implementer or multiple competitive implementers to host a market access platform, and could similarly include relevant energy savings and/or TSB targets, in addition to other performance terms. Prospective implementers would propose elements of program design while adhering to certain market access guiding principles: uniform rules for aggregator eligibility and project qualifications, and uniform payment terms for aggregators based on the TSB value of their savings, as measured using population-level NMEC methods.

Thus, the role of the PRG and IEs would not need to change in that their review and oversight role would not differ from other third-party solicitations.

As suggested by Recurve in comments on the proposed decision, in order to provide for a smooth transition to future market access programs in the main energy efficiency portfolios, we extend the final installation deadline for the summer reliability MAP authorized in D.21-12-011 from August 1, 2023 to March 31, 2024. Market access subjects have also been raised by parties in the portfolio application proceedings (A.22-02-005 et. al.), and further issues regarding these types of programs for 2024 and beyond in the portfolio will be examined as part of that proceeding's activities.

## **2.5. Update to Diverse Business Enterprise Definition**

In the July 15, 2022 ALJ ruling, Commission staff proposed to update the definition of a “diverse business enterprise” to include business enterprises owned by person with disabilities, as set forth in the Commission’s

General Order (GO) 156.

#### **2.5.1. Comments of Parties**

All parties support the inclusion of business enterprises owned by persons with disabilities, as included in GO 156. SCE states that the Commission does not need to make an explicit change to the third-party contract terms and conditions because they already reference GO 156.

#### **2.5.2. Discussion**

While SCE is correct that the contract terms and conditions already reference GO 156, we see no harm in explicitly including persons with disabilities as an explicit category in the contract terms. That change is reflected in Attachments A and B to this decision. We also direct the IOUs to update their contracts in the future, on a forward-looking basis, to reflect any changes to GO 156 that the Commission may adopt in the future.

### **2.6. Update to Terms and Conditions to Reflect Total System Benefit Requirements**

In the July 15, 2022 ALJ ruling, Commission staff proposed to reference explicitly the TSB metric adopted as the universal metric for energy savings in D.21-05-031. Specifically, staff proposed that the pay-for-performance terms be based on verified TSB in the resource acquisition segment of the portfolio.

#### **2.6.1. Comments of Parties**

SDG&E and SCE suggest that the existing language can already accommodate the TSB metric and therefore no change is needed. SoCalGas states that the pay-for-performance terms should be determined between contracting parties and should be based on the metrics, but that establishing an explicit preference for TSB could add unnecessary risk and cost to contracts, as avoided cost projections update over time and new elements are added to the TSB

calculation. SoCalGas is also concerned that the term “verified TSB” is not defined and could cause confusion.

SJVCEO is concerned that the metrics for payment be relevant and related to the scope of work, and states these should be left to the contracting parties to negotiate.

Cal Advocates supports the staff proposal and states that the Commission should amend its stated preference to specify TSB rather than verified savings. Recurve also supports reflecting the TSB goal, rather than just energy savings.

### **2.6.2. Discussion**

Here we agree with the spirit of the staff proposal, in that our overall goals are now set based on the TSB metric and therefore it would likely be in the interests of the IOUs to base pay-for-performance contracts on that metric when possible. However, we also agree with SJVCEO and SoCalGas that this is ultimately best left to the contracting parties to negotiate the metrics and performance payment arrangements depending on the scope of work and goals of each program.

We have made changes to Attachments A and B to this decision, containing contract terms and conditions, reflecting the fact that TSB is our high-level goal. However, we also allow for inclusion of other metrics, as appropriate. In comments on the proposed decision, CEDMC expresses concern that the infrastructure to support TSB may not be ready yet until at least 2024. That may be the case, which is why flexibility in the modifiable term also allows for the more traditional energy savings metrics to be used in third-party contracts.

### **2.7. Confidentiality**

As part of the staff proposal included in the July 15, 2022 ALJ ruling, Commission staff proposed adding a confidentiality matrix in the format of the

Commission's overall supply-side confidentiality framework originally adopted in D.06-06-066, but specific to energy efficiency purposes. The purpose was to increase transparency and decrease the administrative burden of determining, declaring, and challenging confidentiality claims by making it clear to all parties what information would be consider confidential.

### **2.7.1. Comments of Parties**

Almost all parties support the idea of preemptively determining certain third-party energy efficiency information confidential, including SDG&E, PG&E, SoCalGas, and SBUA. PG&E comments that the confidentiality matrix may not be critical at this moment, because issues have not been raised recently.

SCE has concerns about adopting a confidentiality matrix for energy efficiency and considers the existing general order process sufficient. SCE states that whether or not certain information is confidential, or may be deserving of confidential treatment, is a fact-specific inquiry that is not well-suited to a one-size-fits-all confidentiality matrix. SCE cautions that the adoption of a matrix may not achieve the efficiencies desired because it does not appear to replace the ALJ's discretion in granting or denying motions to file under seal. SCE is also concerned that this could be a rule change that requires the approval of the Office of Administrative Law and not just the Commission.

SCE thus asks that, if the matrix is adopted, the matrix be acknowledged to describe only things that a presumptively confidential, and that it not limit parties' ability to claim confidentiality over things not included in the matrix. SoCalGas agrees with this distinction and also adds certain information that should be presumptively confidential, including names of unsuccessful bidders and any other personally identifiable information, compensation figures, unsuccessful bidder information from RFA and RFP selection worksheets in the

advice letter template, budget amounts, and revealing the weights of categories in the scoring process.

### **2.7.2. Discussion**

We agree with SCE's characterization of the matrix, which is that it is intended to identify information that is presumptively confidential, but should not prevent parties from making requests to include additional confidential information, if such confidential treatment is supported by law or other Commission practice. With this caveat, we adopt the staff-proposed confidentiality matrix included as Attachment C to this decision.

We also agree with SoCalGas that the following additional information should be included as presumptively confidential: names of unsuccessful bidders and any other personally identifiable information, compensation figures, unsuccessful bidder information from solicitation selection worksheets in the advice letter template, and the weighting of categories in the scoring process.

However, we find no reason that the budget amounts required in the table of quantitative metrics required from IOUs for their third-party advice letter contract approval should be kept confidential. Specifically, the table in the advice letter template seeks disclosure of the following items, among others:

- Forecast budget by program year for each year contract in effect;
- Forecast expenditures by program year for each year contract in effect; and
- Total program budget.

All of these budget amounts are or will be made publicly available via the IOU requirements to report through CEDARS and Annual Reports.

## **2.8. Contract Extensions**

The July 15, 2022 ALJ ruling asked whether there should be Commission direction or criteria for third-party contract renewals or a limit on extensions.

### **2.8.1. Comments of Parties**

SDG&E feels that contract extensions should continue to be under the purview of the portfolio administrators, and that the Commission should not get involved since it could delay or adversely impact implementation. PG&E does not support contract extension limits since this could harm program operations. PG&E is also concerned that if limits are set that are too restrictive, it could force re-solicitation of a successful program and divert attention away from underperforming portfolio areas. SCE and SoCalGas state that they simply want to maintain flexibility. SJVCEO also agrees.

SBUA comments that the Commission needs to find the proper balance between allowing an implementer to be extended indefinitely and always requiring re-competing contracts. SBUA suggests that the IEs and PRGs serve as consultants on when a contract should be extended or re-solicited. However, they suggest that SDG&E's practice of allowing no more than a two-year extension as a default would be a reasonable practice for all IOUs.

CEDMC supports the Commission requiring the IOUs to publicly disclose whether they are opting to renew an existing contract. CEDMC also suggests that the IOUs should be required to provide justification for a renewal in the form of a request for approval from the Commission.

Cal Advocates proposes a Tier 2 advice letter requirement for any contract extensions, including information regarding the success of the program and justification for its continuation. In addition, if the previous implementation of

the program did not achieve its energy savings or TSB goals, the program should not be eligible for a contract extension, according to Cal Advocates.

### **2.8.2. Discussion**

We do not place limits on contract extensions to existing third-party contracts. We see no reason to micro-manage this aspect of third-party program oversight and have not currently determined that there is any problem with the existing processes or procedures being used. Ultimately, the IOUs bear the responsibility to meet their goals and budgets and should retain flexibility to manage the programs in the best manner to accomplish those goals.

However, we do require that the IOUs disclose to and discuss with their PRG and current pool of IEs when they are making contract extensions, even when those extensions do not otherwise trigger advice letter filing requirements. In discussing contract extensions with the PRGs and IEs, the IOUs should provide an overview of their long-term plans to continue contract extensions and/or re-issue solicitations in the targeted sector or area, along with information about the success of the existing programs or contracts.

### **2.9. Procurement Review Group Conflicts of Interest**

The staff proposal in the July 15, 2022 ALJ ruling included the suggestion that the use of the definition of “financially interested party” in third-party solicitations specify that recusal from participation in a single solicitation is an acceptable mitigation for a financial or perceived conflict of interest, rather than a ban on all PRG participation. Ordering Paragraph 3 of D.18-01-005 initially established the requirement that the IOUs convene PRGs made up of non-financially-interested parties. When the PRGs initially launched, a jointly developed Charter for Energy Efficiency PRG members was created, which



included eligibility rules for membership and the use of the definition of “financially interested party” from D.05-01-055:

“A financially interested party is any person who engages in the purchase, sale, or marketing of energy efficiency products or services, or who is employed by a private, municipal, state or federal entity that engages in the purchase, sale or marketing of energy efficiency products or services, or who provides consulting services regarding the purchase, sale or marketing of energy efficiency products or services, or an employees of a trade association comprised of entities that engage in the purchase, sale or marketing of energy efficiency products or services.”

### **2.9.1. Comments of Parties**

PG&E agrees that the proposed amendment to allow recusal from individual solicitations rather than a global ban is reasonable. SCE, SDG&E, and SoCalGas prefer to leave the existing, stricter requirements in place, arguing that the PRGs are deeply involved in the development and evaluation of solicitations, both in general and specifically for individual projects.

SBUA and CEDMC both believe the current rules are too rigid and should be eased, to allow more experts to be eligible to serve as valuable expert members of the PRG.

Cal Advocates recommends that the PRG charter be amended explicitly to exempt individuals employed by a state academic and/or state educational institution. Specifically, Cal Advocates would add the following language:

“Notwithstanding the above, people employed by a state academic and/or state educational institution that engages in the purchase, sale or marketing of energy efficiency products or services, or who provides consulting services regarding the purchase, sale or marketing of energy efficiency products or services, are not “financially interested parties” unless they meet the above definition because of a

financial interest other than their employment with a state academic and/or state educational institution. An EE PRG member whose only financial interest is being employed by a state academic and/or state educational institution that engages in the purchase, sale or marketing of energy efficiency products or services, or who provides consulting services regarding the purchase, sale or marketing of energy efficiency products or services, must disclose his/her employment with the state academic and/or educational institution and recuse him/herself from any EE PRG matter involving the consideration of a contract or grant to the state academic and/or state educational institution.”

### **2.9.2. Discussion**

On balance, the current rules that result in a total ban on PRG participation by anyone with a perceived or real financial conflict of interest in a single solicitation is too rigid and unnecessarily excludes expertise that would otherwise be valuable and even encouraged as part of PRG membership. As pointed out by Cal Advocates, this problem is particularly acute if it results in excluding members of state academic institutions. We will therefore amend the use of the definition in the narrow and specific context of third-party solicitation PRGs, such that anyone who is employed by a state academic or educational institution does not have a financial conflict of interest solely by virtue of their employment with the institution. Should a state academic institution be participating in a particular solicitation, the individual PRG member employed by or associated with that state academic institution would then be required to recuse himself or herself from participation in any discussions related to that particular solicitation. But in any event, any individual PRG member with a real or perceived financial conflict of interest may remove that conflict of interest by

recusal from participation in an individual solicitation and need not be banned from PRG participation entirely.

### **2.10. Applicability of Third-Party Rule Changes in this Decision and Contract Amendment Advice Letters**

The July 15, 2022 ALJ ruling asked parties to weigh in on when any changes in third-party contract terms and conditions or solicitations processes addressed in this decision should become operable. There is also the question of whether the changes adopted herein should apply to local government partnership contracts as well as third-party contracts related to the Energy Savings Assistance (ESA) program.

In addition, the staff proposal included a set of triggers and suggested that Tier 1 advice letters be required to be filed with contract amendments to existing third-party contracts based on the triggers.

#### **2.10.1. Comments of Parties**

SDG&E recommends that any changes to the standard and modifiable contract terms and conditions apply only to new contracts where the RFP has not yet been released as of the date of the decision. Otherwise, according to SDG&E, bidders could be disadvantaged for relying on the prior contract terms in their bids. PG&E, SoCalGas, CEDMC, and SJVCEO agree.

SCE also agrees and strongly opposes any requirements to reopen existing contracts for renegotiation. In addition, SCE recommends against applying the terms of this decision to their ESA contracts, because they have just recently updated the Master Service Agreement to comply with D.21-06-015 in the ESA proceeding, and updating again would be disruptive.

PG&E and SDG&E agree that any changes in this decision should also apply, as relevant, to local government contracts solicited after the date of this

decision. SCE and SoCalGas do not appear to think all of the topics herein are relevant. SJVCEO states that a number of the questions addressed here are relevant to local government partnerships, particularly the issues around cybersecurity insurance.

On the proposal for Tier 1 advice letters for contract amendments, all of the IOUs oppose this proposed requirement. All IOUs support the filing of advice letters only in the circumstances included in D.21-05-031, ordering paragraph 12. The IOUs also generally state that notification can be done in Annual Reports without the need for individual advice letters.

SBUA, CEDMC, and Cal Advocates, on the other hand, support the requirement for Tier 1 advice letters for contract amendments, mostly on transparency grounds. Cal Advocates further argues that it should be a Tier 2 advice letter, to ensure Commission oversight and approval. Cal Advocates also has consistently argued that all third-party contracts should be filed by Tier 2 advice letter for approval, not just those exceeding 3 years in length and \$5 million in value.

#### **2.10.2. Discussion**

We agree with all parties who state that the changes to third-party contract terms and conditions and processes in this decision should apply going forward to any solicitations where the RFP has not yet been issued. We also see no reason why the changes should not be applied to local government partnership contracts, pursuant to R.19-08-006, on a going forward basis and as applicable in the particular circumstances of the local government services.

We do not, however, apply these changes to the ESA contracts, since the ESA process is addressed more fully in another proceeding and, as pointed out

by SCE, there were just extensive changes made to the contracts there. We do not want to disrupt that process by making more ESA-related changes here.

Since we are only requiring the changes ordered in this decision to apply to new contracts solicited after this decision is adopted, changes will not be required to existing contracts. Thus, we will not adopt the staff-proposed triggers and advice letter requirements for amendments to existing contracts. Therefore, the requirements of D.21-05-031, ordering paragraph 12, continue to apply and dictate where Tier 2 advice letters are required. However, we also clarify that the portion of that ordering paragraph (D.21-05-031, ordering paragraph 12) where it states “a program is considered new if it makes a change in the market sector, a change in implementation or delivery strategy, or meets already-existing triggers for third-party contract approvals given in Decision 18-01-004” applies to third-party programs. Thus, if such a change is made to an existing third-party program such that the program would be considered “new,” a Tier 2 advice letter filing is required. We also clarify that a Tier 2 advice letter filing is not required for a third-party contract amendment that is not considered a new program.

### **2.11. Accounting Methods for Third-Party Administration Costs**

The lack of uniformity in accounting for certain costs has been a longstanding and consistent issue in energy efficiency portfolios for many years. Here we specifically address accounting for third-party administrative costs. The July 15, 2022 ALJ ruling asked parties whether the IOUs should use a consistent method for accounting for these costs, whether development of a method could be delegated to Commission staff, and what boundaries the Commission should set around these costs.

### **2.11.1. Comments of Parties**

SDG&E states that the IOUs should use a consistent method or framework for accounting to ensure results reported from period to period and from IOU to IOU are comparable. This enables financial report users to review similar IOU reports side by side with the assurance that accounting principles have been followed to the same standards. PG&E, SCE, and SoCalGas agree. SBUA, Cal Advocates, CEDMC, and Recurve also agree.

SDG&E offers its process and procedures as an example for standardizing the methods, using estimates and assumptions that affect the amounts reported, in accordance with US Generally Accepted Accounting Principles (GAAP). PG&E also offered a methodology in its prepared testimony in its portfolio application, which maps costs to the California Energy Efficiency Coordinating Committee (CAEECC) proposed cost categories and Energy Efficiency Policy Manual cost categories. SDG&E suggests that the IOUs and portfolio administrators work collaboratively to ensure that they interpret and implement the Energy Efficiency Policy Manual cost categories consistently and that the level of detail meets reporting requirements without being burdensome.

All parties also seem to agree that the Commission can delegate to its staff the development of a final accounting methodology, though SDG&E and SCE suggest that the Commission undertake a review of all applicable laws before doing so. SoCalGas suggests that the PCG could be leveraged to address third-party administration costs, with Commission staff as facilitators.

For principles that the Commission should set, CEDMC suggests that the Commission be guided by principles of standardization, relative simplicity, ease of administration, and integration of existing program cap guidelines.

SoCalGas also offers a series of principles and boundaries for Commission staff in developing a consistent methodology, including unbiased facilitation and resolution of conflicting views, providing a data dictionary of cost categories, flexibility, and reasonable implementation milestones.

PG&E suggests clarity, simplicity, and transparency. Recurve suggests that the accounting methodology should be straightforward, consistently defined, and implemented across all portfolio administrators and third parties. Recurve also suggests consultation with the Commission's audit team.

### **2.11.2. Discussion**

All parties seem to agree that a consistent accounting methodology is needed, and that additional guidance is needed from the Commission about what costs should be accounted for in particular categories. We offer the following guidance.

First, calculation of the total resource cost (TRC) test for the resource acquisition segment of the portfolio should include portfolio administration costs allocated to the segment.

Second, as proposed by some of the IOUs, administrative costs that cannot be directly associated with individual programs may be reported at the segment level or sector level, and need not be cascaded down to individual programs as is currently required for CEDARS reporting.

Third, we will continue to rely on the definition of "direct implementation costs" from D.09-09-047,<sup>7</sup> which states that direct implementation costs are defined as "costs associated with activities that are a direct interface with the customer or program participant or recipient (*e.g.*, contractor receiving

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<sup>7</sup> D.09-09-047 at 50.

training).” D.09-09-047 goes on to say that direct implementation also includes “direct implementation non-incentive costs associated with incentive-based programs. These costs include engineering project management, customer support, certain sub-programs (e.g., Energy Audits and Continuous Energy Improvement), market transformation, and long-term strategic plan support.” We clarify here that long-term strategic plan support refers to work tied to implementing a Strategic Plan, which according to D.08-09-040, set a roadmap for energy efficiency through 2020. Specifically, D.09-09-047 states:

We also clarify here how Strategic Planning program costs should be allocated: (1) administrative and logistical costs related to workshops on Strategic Planning issues may be considered “administrative costs;” (2) program planning/design/project management and information gathering costs related to specific Strategic Plan related non-resource and resource programs may be considered “direct implementation non-incentive costs.”<sup>8</sup>

While D.09-09-047 did accept utility categorization of program planning, design, and project management costs as direct implementation non-incentive costs, those costs are clearly directly attributable to a program and thus not overall utility portfolio administration costs. Further, according to D.09-09-047, planning costs not attributable to a particular program, such as identifying third-party solicitations and holding workshops on the development of portfolios, are portfolio administration costs in the utility administrative costs category, not in the direct implementation category.

The IOUs should continue their work through the Reporting PCG to appropriately and consistently apply the guidance above in their portfolio

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<sup>8</sup> D.09-09-047 at 57.



administration cost allocation. Acceptance of the Reporting PCG of the portfolio administration cost allocation methodology should then be formalized by the IOUs submitting a memorandum to Commission staff to inform the CEDARS data specification for the 2023 program tracking claims. IOUs should then apply the consistent methodology in their 2023 true-up advice letter in September 2023 and thereafter.

## **2.12. Third-Party Stakeholder Workshops**

D.18-01-004 required Commission staff to hold semi-annual third-party stakeholder workshops. The July 15, 2022 ALJ ruling asked parties if that requirement could be modified to annual, and whether the purpose and scope of the meetings should be further specified.

### **2.12.1. Comments of Parties**

SDG&E and PG&E recommend that the stakeholder workshops could shift to being annual. SoCalGas and SCE suggest that the workshops could be held on an ad hoc basis or discontinued entirely, since fewer issues are arising now that the process is better understood by all participants.

CEDMC and SBUA would prefer to continue the semi-annual workshops, since they have been useful.

SDG&E recommends standard topics for annual stakeholder workshops. PG&E suggests a flexible format. SCE suggests the purpose should be to receive feedback from the market participants, since the IEs and PRGs have their own forum already.

### **2.12.2. Discussion**

We are satisfied that the semi-annual workshops ordered in D.18-01-004 can be modified to be required to be annual. Commission staff may always convene a workshop more frequently than annually if the need arises, but we

will no longer require it. We do feel that annual meetings to allow stakeholders, particularly market participants, to express their feedback will continue to be useful.

We also will not specify the format or content of those workshops by this decision. We are confident that Commission staff, working with all stakeholders, can craft appropriate and relevant agendas based on informal feedback they hear from stakeholders in between annual workshops.

### **3. Strategic Energy Management**

#### **3.1. Applicability of SEM Program Design and Guidebooks to Non-Industrial Sectors**

The July 15, 2022 ALJ ruling asked parties for input on whether the industrial SEM program design and related guidebooks could or should be applicable to non-industrial sectors and/or whether they need to be revised to be more applicable to non-industrial sectors.

##### **3.1.1. Comments of Parties**

SoCalGas believes that industrial SEM program design and related guidebooks could be applicable to non-industrial sectors, and states that it proposed expansion of SEM to other sectors in its Business Plan application (*See A.22-02-005 et. al.*). SoCalGas argues that in other jurisdictions, program designs similar to California Industrial SEM design have been effective at generating persistent savings in a variety of sectors. SDG&E and SCE generally agree.

MCE also agrees, stating that it has successfully applied the SEM program design to several sectors already with good results. MCE suggests that a program administrator can apply the core strategies of SEM to a range of customers across designated sectors. MCE also observes that effective non-industrial SEM

programs are commonplace outside of California and have been operating for more than twenty years. CEDMC agrees with these observations.

PG&E also generally agrees that the SEM approach is broadly useful in other non-industrial applications but suggests that the guidebooks may require some adaptation to account for sector differences before they are specifically applicable to other sectors. PG&E recommends that SEM expansion be based on market assessment that identifies the sectors and subsectors that could most benefit from SEM's key elements, as well as necessary adaptations to meet the needs of the new sectors.

PG&E further recommends that Commission staff should collaborate in an advisory capacity with the statewide SEM program administrators (as has been done with recent SEM guidebook updates) to adapt the guidebooks to particular sectors. PG&E anticipates that the expanded design guide would more closely resemble a platform rulebook that could be used by program implementers to innovate in program design. PG&E further recommends that after the rulebook is updated, program administrators with third parties using it could count those programs toward their third-party outsourcing targets.

SoCalREN's comment resemble PG&E's in that they suggest that the current SEM approaches and guidebooks can be used for non-industrial sectors with minor language and technical adaptations. SoCalREN also urges that SEM be encouraged in non-industrial sectors immediately, with the guidebook updates to follow.

SBUA suggests that the Commission undertake, with stakeholder involvement, a thorough review of any non-industrial sector qualifications for SEM programs before allowing SEM to apply in those sectors.

### **3.1.2. Discussion**

In general, we agree with most parties that the SEM approach is generally applicable to other non-industrial sectors, and approve its expansion beyond just the industrial sector. In order to make this happen, we will require a few additional steps.

First, we generally agree with PG&E and SoCalREN that the current SEM guidebooks can be the basis for any additional sector-specific guidebooks, and that they will require only minimal updating in order to be applied to other non-industrial sectors. The program administrators may begin offering SEM-style programs in other non-industrial sectors immediately, utilizing the existing guidebooks posted on the Public Documents Area<sup>9</sup> (*See link below*), but must produce sector-specific guidebooks by no later than one year from the completion of the non-industrial SEM study discussed in Section 3.2.2 below. Each specific guidebook must be posted on CEDARS. A redline of the differences between the sector-specific guidebook and the general SEM guidebooks must be posted on the Commission's Public Documents Area as well.

We also agree with PG&E that any program administrator that solicits for third parties to deliver programs using the SEM guidebooks as a guide should have that funding count toward their third-party solicitation requirements.

### **3.2. Applicability of Long-Term Customer Participation, Net to Gross Rates, and Effective Useful Lives**

Currently, the SEM program is designed for long-term customer participation following a prescriptive program design comprised of three

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<sup>9</sup> See <https://pda.energydataweb.com/#!/admin/documents/2186>

two-year cycles. Participants are encouraged to participate in all three cycles. As a result of this long-term participation, the program receives assumptions of a NTGR of 1.0 and longer EUL than other programs. In response to the July 15, 2022 ALJ ruling, parties commented on whether the NTGR and EUL assumptions should still be applicable if a less rigorous SEM program design was used in other non-industrial sectors.

### **3.2.1. Comments of Parties**

SoCalGas argues that evidence from other jurisdictions operating successful SEM efforts shows that there are other sectors where the current program design would work well. For some settings, such as hospitals, schools, universities, or government sites, as well as food processors and dairies, SoCalGas argues the NTGR and EUL of 5 years should be equally applicable. In some other settings, such as commercial offices, refrigerated warehouses, hospitality, or large-scale retail, the NTGR should be equally applicable since long-term engagement is needed, but the EUL values may need further investigation.

MCE observes that the level of customer engagement is a better indicator of programmatic success than the sector designation itself. Thus, MCE argues, the NTGR and longer EUL assumptions should be equally applicable regardless of sector, provided that the customer engagement is similar. PG&E makes a very similar argument. SDG&E and SCE also agree, and states that taking a holistic approach and ensuring the commitment of the participant are key components of SEM, regardless of sector. As such, they argue that the NTGR and EUL assumptions should still be applicable.

CEDMC argues that limited modifications to the cycle terms do not affect the rigor of the approach. Thus, they suggest that any adjustments or incidental

deviations from the SEM design guide should be documented in the program implementation plan.

SCE also suggests that the Commission conduct additional studies to assess whether the program approach and activities for non-industrial sectors are sufficiently rigorous to support the NTGR and EUL assumptions, but the existing assumptions should be used in the meantime.

### **3.2.2. Discussion**

On these issues, parties seem to be in general agreement that the SEM holistic approach is more important than the sector to which it is being applied. The key customer characteristics relevant to SEM participation seem to be dedicated resources for implementing long-term measures at the customer site and higher potential for onsite behavioral, retro-commissioning, and operational savings. As long as these characteristics are present, a NTGR assumption of 1.0 is justified.

As such, we agree that we should continue to use the current NTGR assumption of 1.0 and the current longer EUL assumptions for any programs utilizing SEM. Thus, any SEM programs initiated after the date of this decision may utilize these assumptions.

In the long-term, we agree with SCE that we should complete a study to understand these issues more fully, to see if these assumptions remain appropriate. Therefore, within one year of the adoption of this decision, Commission staff will manage and implement a study for this purpose, including recommendations for successful non-industrial SEM programs, based on lessons learned from this study. The results of this study should be used to develop appropriate SEM guidebooks for non-industrial sectors that have the characteristics conducive to successful SEM participation.

### **3.3. Oversight Process for SEM Guidebooks**

The July 15, 2022 ALJ ruling asked parties' opinions on whether the process for overseeing the SEM guidebooks is working in its current form, or if changes are needed.

#### **3.3.1. Comments of Parties**

SoCalGas believes the current process works very well and should be continued. SoCalGas points to the highly collaborative process for revising the SEM guidebooks, as well as ongoing updates to best practices between revisions.

PG&E agrees, and emphasizes the "living document" nature of the guidebooks. PG&E also suggests that Commission staff and evaluators should continue to be involved in an advisory capacity, and that the process may benefit from the input of the NMEC working group process.

SDG&E notes that since the SEM programs are transitioning to be implemented by third parties, some parts of the process will need to change. SDG&E suggests a working group similar to the NMEC one be convened, or a PCG, as necessary. SCE had a similar recommendation, suggesting that the SEM group tackle common program questions and offer recommendations to be incorporated into the SEM program design guide.

#### **3.3.2. Discussion**

We agree with parties that the current process is working well and can be continued. We prefer to foster a collaborative process wherever possible, and the existing approaches seem to be working well. We agree with several parties that a PCG<sup>10</sup> could be a good tool to ensure the ongoing maintenance and revisions to the California SEM Design and M&V Guidebooks.

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<sup>10</sup> The PCG structure was originally conceived in D.10-04-029 for the 2010-2012 Evaluation Plan.

Thus, Commission staff may create a PCG with a primary purpose to monitor, track, and manage the SEM guidebook revisions and program administration best practices. The group should remain collaborative, and include not only all interested program administrators and evaluators, but also third-party administrators and implementers involved in SEM.

#### **4. Commission Database Tools**

The July 15, 2022 ALJ ruling invited parties to comment on the governance needs for the Commission's database tools, including CEDARS and CET. These tools are critical to program administrators, both for initially proposing their programs, as well as for monitoring and reporting. This section discusses the changes we make to the process for improving these vital tools.

##### **4.1. Governance Committee Formation**

This Section discusses whether a new governance committee should be formed and who should be a member.

##### **4.1.1. Comments of Parties**

SDG&E recommends that the Reporting PCG continue to be the group of stakeholders involved with CEDARS and CET. SDG&E believes that a new governance committee is not needed. SoCalREN agrees, stating that the PCG group is working, incorporates all necessary stakeholder feedback and provides sufficient oversight, and therefore should remain as-is.

PG&E would prefer a governance committee that would be comprised of the portfolio administrators and Commission staff, and engage an independent coordinator or facilitator to provide project management, progress reporting, meeting facilitation, and coordination with software developers. SCE has a similar idea to utilize a governance committee comprised of portfolio administrators and staff, to determine jointly the annual development and



update priorities for CEDARS and CET. SCE would prefer that the structure allow portfolio administrators to retain voting control, with interested stakeholders providing input and receiving education about how software or calculation processes work. SCE recommends that the committee's oversight be limited to functionality only and not merged with the California Technical Forum (CalTF) governance.

SoCalGas notes that the current PCG provides a forum for portfolio administrators and Commission staff to discuss and provide feedback on CEDARS and CET development. SoCalGas thus emphasizes the importance of continued opportunities for portfolio administrators to provide input and feedback.

SBUA recommends that a governance committee would help align goals across various stakeholders. Recurve suggests that a governance committee would allow Commission staff to share some responsibility for updates to the suite of tools that have been historically burdened by information technology contracting requirements, provided that a contracting mechanism could be established. Recurve also observes that the scope of CEDARS is inherently more complex than the CET, and the CET lends itself well to an open-source code governance model. Recurve goes on to describe the structure of an open-source governance model as consisting of: 1) a technical steering committee responsible for all technical oversight; 2) contributors, including anyone in the technical community that contributes code, documentation, or other technical input; and 3) committers, who are contributors to whom the project has granted the privilege of modifying (or "committing") the source code, documentation, or other technical artifacts in a project repository.

CEDMC supports the creation of an independent governance committee for CEDARS and CET, and encourages that such a committee include members from the third-party implementation community. CEDMC recommends that these third-party entities have an equal vote, and that the committee should be open and transparent, with stakeholders welcome to attend meetings and offer comments on specific outputs developed by the committee.

LGSEC recommends the following criteria to advance database tool enhancements, as modeled by the CalTF/electronic technical resource manual (eTRM) development process:

- Establish an effective process for stakeholder input, prioritization, communication, and user testing that ensures tools are useful and user-friendly.
- Develop effective and accessible education materials, including video trainings.
- Organize data structure to enable seamless communication and data validation across tools as a means to improve data integrity and maintenance.
- Ensure that governance teams coordinate closely with the CalTF administrators to leverage lessons learned and effectiveness associated with eTRM development and maintenance processes, as well as implement seamless integration among these important program data systems.

BayREN, 3C-REN, and I-REN support the creation of a governance committee with facilitation, to minimize the burden on program administrators and ensure stakeholder feedback is collected and implemented equitably.

#### **4.1.2. Discussion**

The majority of commenters seem to agree that the existing Reporting and Data Management PCG is generally working well. For the most part, no one

wants to suggest another committee unless absolutely necessary. It does not appear to be necessary here, so we will not require it.

However, oversight of these database tools could definitely benefit from a paid project coordinator/facilitator and the development of a formal governance document, to allow PCG members and other stakeholders to understand the reporting and data structures and to provide input in a structured manner.

It is also clear that the transition to third-party program designers and implementers has resulted in more stakeholders using the tools than ever before. A paid project coordinator can work with the PCG members to develop a governance document and other deliverables, including annual development plans and public webinars.

Several commenters referenced the CalTF as a model, where a project coordinator was contracted to facilitate deemed statewide measure coordination and the development of the eTRM, as well as hosting meetings and managing CalTF products like annual business plans, technical paper, and formal proposals.

While this may be a useful model, it appears that the current PCG structure has many of the same characteristics and is generally working well. We will require that the Reporting PCG continue to serve as the managing body for CEDARS, CET, associated calculators and databases, and reporting/data management activities in general. The Reporting PCG will develop a scope of work that the portfolio administrators may use to solicit for a project coordinator. The coordinator should be in place no later than the end of the first quarter of 2024, in order to cover the 2024-2027 portfolio cycle.

The project coordinator should be responsible for creating the governance document, which should cover at least the following items:

- PCG membership, including roles and responsibilities;
- Contract management;
- Funding rules;
- Reporting timelines;
- Software and data specification update protocols;
- Change management protocols;
- Processes for engaging with non-portfolio-administrator stakeholders; and
- An annual development plan.

#### **4.2. Funding and Representation from Non-IOU Administrators**

The July 15, 2022 ALJ ruling asked whether CEDARS and CET should be funded by the IOUs only or whether the other portfolio administrators should be expected to co-fund the reporting systems out of their authorized budgets.

##### **4.2.1. Comments of Parties**

PG&E recommends that all portfolio administrators co-fund the CEDARS/CET governance efforts. However, PG&E recommends that the funding be scaled based on the relative size of the budgets from which the funding is drawn. PG&E believes that shared responsibility for funding this effort would help facilitate a sense of shared ownership. However, regardless of whether the Commission chooses to require all portfolio administrators or just the IOUs to provide funding, PG&E believes that all administrators should be included in the governance committee, as they are the primary users of the system.

SDG&E recommends that the reporting systems should be funded by all of the administrators, since they are all users that benefit from the systems. Further, SDG&E cites to D.16-08-019, ordering paragraph 16, that states the “funding for

community choice aggregators and regional energy networks for evaluation shall be set on proportional basis, based on total program budget, from among the up-to-40 percent allocation within the relevant utility service territory.” Therefore, SDG&E argues, each administrator should provide funding from its individual evaluation, measurement and verification (EM&V) budget. SDG&E agrees with PG&E that should the Commission determine not to fund the reporting systems in this way, all portfolio administrators should still be part of the Report PCG, consistent with current practice.

SDG&E also recommends that the EM&V roadmap process that is used to budget EM&V activities also cover determining the appropriate funding for CEDARS and CET. The proportional amounts can be determined as part of the roadmap process since the Commission has provided EM&V funding allocation flexibility. Further, SDG&E recommends that the funding come out of the Commission’s portion of EM&V funding.

SCE agrees that all administrators should fund the tools, and additionally recommends that the costs not impact cost-effectiveness calculations.

SoCalGas believes that any administrator that uses the reporting systems should fund them and be involved in the governance committee. SoCalGas points out that RENs and CCAs currently contribute to the funding of the reporting systems through the Commission’s share of EM&V budgets.

SBUA supports the smaller administrators contributing to funding for the reporting systems as long as it does not represent a significant funding burden. SBUA also suggests that all users should have representation in the governance of the systems.

SoCalREN believes that all administrators should co-fund the reporting systems on a proportional basis from their administrative budgets.

CEDMC agrees that all administrators should proportionally fund the costs associated with the reporting systems and should have equal votes in the governance process. CEDMC also believes that all non-funding members of the governance committee should have an equal vote relative to the funding members.

Recurve suggests that the CET has several operational issues that encumber portfolio administrators and third-party implementers. Therefore, several administrators have expressed support for increasing CET funding. Recurve also believes that all administrators should have a role in governance. Recurve suggests that the Commission identify the most efficient path for channeling funds to support CEDARS and CET.

BayREN and 3C-REN, as well as I-REN and R-REN, state that all portfolio administrators should be represented in the governance process, due to the ubiquitous use of CEDARS among them.

#### **4.2.2. Discussion**

We agree with all parties who recommend that all portfolio administrators should be part of the Reporting PCG membership, since they are the key users of the database tools. The Reporting PCG shall continue to be comprised of Commission staff, portfolio administrator staff, the project coordinator (to be hired), and the contractors who develop and support the database tools.

We do not take the step of adding implementers to the Reporting PCG formal membership, as suggested by CEDMC, but will take a number of steps, as described further below, to improve transparency and create additional opportunities for stakeholder input, especially from implementers.

On the question of funding, we understand the spirit of the suggestion that all portfolio administrators should co-fund the database tools, since they are all

users. However, this may make budgeting and contract administration more difficult than necessary. We start from the premise that all of the funds that we utilize for energy efficiency portfolio purposes come from ratepayers of the four large IOUs. The non-IOU administrator budgets are funded out of collections from that same source. If we were to apportion the database tool budget from each portfolio administrator, it would be a complex budgeting exercise and would require funds to flow from IOUs to RENs and CCAs and then back again in order to pay for the database contractors.

Instead of this, and since the funding will come from the same ultimate ratepayer source, we will ask the IOUs to fund the database tool contracts from out of their EM&V budgets. According to D.16-08-019, the IOUs' portion of the EM&V budgets is capped at 40 percent, with the other 60 percent (or more) available to the Commission staff for use in impact evaluations. While the IOU EM&V portion is not currently reaching the 40 percent cap, the addition of the funding of the database tools is one of the reasons the IOU proportion could rise.

We also will ask the IOUs to determine amongst themselves which IOU will issue the solicitation for and manage the database contractors, along with the new project coordinator, for both CET and CEDARS and other associated calculation and reporting tools identified by Commission staff. Staff will develop a list of these tools, to be updated as needed, and share this list with the Reporting PCG to be included in the PCG governance document and other deliverables, including annual development plans. By June 30, 2023, the lead IOU shall file a Tier 2 advice letter that describes, at a minimum, impacts to EM&V budgets and a scope of work for the different contractual functions they are directed to fund (data systems, web development, calculators, and project coordination).

In addition, as already stated, all portfolio administrators, not just IOUs, will be represented on the Reporting PCG overseeing the contractors. Commission staff will also remain heavily involved.

#### **4.3. Transparency and Role of Stakeholders**

The July 15, 2022 ALJ ruling asked parties to suggest how the Commission should ensure transparency to stakeholders about CEDARS and CET development and maintenance. The ruling also asked about the role stakeholders should play in the software development and update process, and what types of notifications would enable stakeholders to understand how the tools will be changing.

##### **4.3.1. Comments of Parties**

PG&E suggests that the role of the facilitator would support transparency by providing opportunities for non-committee members to provide input and reporting on plans and progress to the broader stakeholder community. PG&E also recommends that the facilitator work with the PCG members on a regular basis to create a development plan for each tool, allowing stakeholders to comment.

SDG&E suggests that a process for submitting input or comments should be developed so that the input could be accounted for during the PCG meetings. SDG&E points out that, in particular, third-party implementers are users of the tool and should be able to provide feedback based on their use of the CET. SDG&E also suggests a change log, user documentation, provision of code, and training would help with stakeholder education and input.

SCE suggests that stakeholders should have the opportunity to review and provide feedback on the scope and tasks associated with upgrades and updates to the tools, particularly if they are not considered routine. SCE represents that



currently, this work is shared through the PCG on ad hoc basis, which may be sufficient if there is enough funding and support for the necessary updates and for soliciting stakeholder feedback.

SoCalGas suggests that a description of planned updates could be placed on the CEDARS landing page. In addition, portfolio administrators should be able to give feedback on the implications of proposed changes on internal systems, as well as be involved in testing to make sure the tools function properly. SoCalGas also suggests that an annual development plan be done in coordination with the Database for Energy Efficiency Resources (DEER) resolution process, since there is some overlap of issues.

SBUA comments that transparency requires regular reporting and a feedback mechanism. According to SBUA, both elements should occur annually at a minimum, with additional reporting and feedback to address major updates. SBUA understands that having many stakeholders involved in the development of new tools often lengthens development times, but states that it is important that a testing process be established for newly-developed tools and that the process allow for robust stakeholder feedback.

Recurve suggests that the Commission host open meetings on updates on a regular basis in existing venues. Recurve points out that the Commission already does a lot of external updating and reporting.

The RENs all underscore the importance of ongoing input and communication. I-REN suggests email notifications be sent to the portfolio administrators when tools are either added or revised. The RENs also support having the opportunity to comment on and assist in the prioritization of potential improvements or new items, as well as allowing sufficient time to test the improvements and provide feedback. The RENs and CCAs also support an

annual development plan as a useful resource to communicate changes to data specifications and other tools.

#### **4.3.2. Discussion**

Commenters have identified areas where stakeholders need more transparent information about CEDARS and the CET, as well as opportunities to participate in resource development, software testing, and strategic planning. Requests for transparency improvements include comprehensive documentation materials, access to CET codebase, access to governance documents, and announcements and trainings on new updates.

Once a project coordinator is hired and onboard, the coordinator can work with the PCG members to develop a more robust process for stakeholder engagement to incorporate these requests. In general, we support additional opportunities for stakeholder engagement and input, bearing in mind and minimizing scheduling impacts.

Stakeholders should also consider that sometimes developers receive comments that are not within the scope or budget of what is feasible. Therefore, the PCG will always reserve the right to decline or postpone requests. Likewise, the PCG may also update the development plans if necessary, if policy changes or unforeseen factors require it.

We will also require that the project coordinator work collaboratively with the PCG and contractors to publish an annual development report and allow program implementers, and any other stakeholders, to provide comments and suggestions. This report will identify plans to update the tools in the coming year. The report will also be required to include a summary of suggestions or perspectives offered by stakeholders, along with reasons why the suggestions were or were not adopted for implementation.

#### **4.4. Interaction of CET with NMEC**

##### **4.4.1. Comments of Parties**

Recurve provided extensive comments about the need to accommodate the unique characteristics of NMEC programs in cost-effectiveness calculations. Recurve suggested that the Commission approve use of its Flex Value code, which is open source, and consider utilizing this tool for NMEC projects.

Recurve states that the open-source engine provides the required calculation of TSB and cost-effectiveness for the current and future energy efficiency programs. Recurve also suggests that the open-source engine improves access to cost-effectiveness analysis for third-party aggregators. Ultimately, argues Recurve, an open-source engine would provide consistent and transparent forecasting and reporting of cost-effectiveness metrics for all forms of distributed energy resources (DERs), not just energy efficiency.

Recurve lists numerous additional benefits of the open-source code, including computation of grid and carbon benefits, transparency, simplified inputs and outputs, computation of emissions impacts, allowing stakeholder modifications to parameters to easily assess impacts of policy changes, and ensuring compatibility with current policy and vintage control through an inclusive governance structure.

##### **4.4.2. Discussion**

We will ask the Reporting PCG members and the project coordinator, as well as the technical sub-group for the CET, to work with Recurve to examine their code, along with other tools and approaches, and consider the best option for NMEC projects. If, after a reasonable testing period and vetting, the Flex Value code is deemed appropriate for processing NMEC claims, we will consider coding CEDARS to run NMEC claims through our version of the codebase. We

will also consider other options. Stakeholders and subject matter experts will be invited to consult with the CET technical subgroup to assist with assessment and technical solutions.

## **5. CATALENA Project**

The July 15, 2022 ALJ ruling invited parties to comment on how the Commission should move forward with the CATALENA project, given that it has yet to be implemented to the extent envisioned in D.18-05-041.

### **5.1. Comments of Parties**

SDG&E and SCE maintain that D.18-05-041 neither requires nor authorizes the IOUs to implement disaggregated demand data in the adopted statewide tool, and any Commission order requiring the IOUs to share confidential customer information without customer consent must specifically articulate such a requirement and comply with applicable Commission decisions, IOU tariffs and laws regarding customer privacy. Similarly, SoCalGas asserts the CATALENA tool represents an extension of Energy Atlas capabilities and should be in compliance with D.14-05-016 and relevant aggregation standards for qualified users, use cases, and other Commission decisions and statutes and regulations.

PG&E states the most efficient and secure way to provide demand data in CATALENA would be for the CEC to provide pre-defined views of the data in an Amazon Web Services (or similar) database, and have the CATALENA tool simply read from those views. In this kind of arrangement, PG&E notes, the IOUs would have no control over the data-sharing mechanism between the CEC and the CATALENA tool and therefore no liability for any data breaches that might result from the data sharing. PG&E considers the CATALENA tool to be an optimal match for Use Case 1 described in D.14-05-016 (Local Governments

Seek Access to Covered Data and Non-Covered Data), and a suboptimal match for Use Cases 2 and 3 (Research Institutions Seeking Access to Energy Usage and Usage-Related Data to Evaluate Energy Policies) for disaggregated data because of the process requirements and amount of human intervention, non-disclosure agreements and cybersecurity needed. With respect to expanding the scope of the CATALENA tool, PG&E notes that any governance structure would need to accommodate the likely increased complexity of budgeting, accounting and prioritizing work between or among proceedings.

LGSEC favors expanding the scope of the CATALENA tool to accommodate Environmental and Social Justice Action Plan needs, as well as to coordinate with the California Flexible Unified Signal for Energy (CalFUSE) to integrate electrification and high DER analyses being conducted in other proceedings. LGSEC further recommends that the Commission take upon itself to issue a request for proposals and manage development and implementation of the tool, rather than maintain SCE as the lead program administrator. To fully leverage disaggregated data, LGSEC recommends a secure geographic information system (GIS) portal with login and request tracking. LGSEC provides a list of use cases it states it developed during informal discussions with the CEC, which LGSEC asserts indicate that local governments can generally be treated in a similar fashion as authorized state agencies in terms of data sharing.

Recurve states that, to be useful in supporting population NMEC programs, the statewide tool would need to accommodate hourly consumption data and past program participation, and as such the CATALENA tool's usefulness as initially conceived may have passed. Given that the RFP for the CATALENA tool has yet to be issued, Recurve suggests discontinuing the project

and allocating the two million dollars authorized by D.18-05-041 to the CEC to enable core use cases for their data infrastructure.

In reply comments, both I-REN and BayREN emphasize that the CATALENA tool is not a replacement for local governments' needs for disaggregated data for purposes of program implementation and NMEC evaluation.

## **5.2. Discussion**

This decision confirms the Commission's intent, as articulated in D.18-05-041, for the CATALENA tool to expand the Energy Atlas to statewide use, including both the public-facing database and the back-end geospatial relational database and making disaggregated demand data accessible to qualifying users. Given parties' comments and the fact that SCE has yet to issue an RFP to implement the CATALENA tool, the Commission finds it reasonable to reassign responsibility for deployment and ongoing management of the CATALENA tool. This decision relieves the IOUs of D.18-05-041's direction in ordering paragraph 32 to select a lead IOU to competitively solicit an implementer for the CATALENA tool. The Commission will instead explore the feasibility of partnering with the CEC to implement CATALENA, and Commission staff intend to seek a memorandum of understanding (MOU) or other agreement with the CEC to enable direct data exchange with the CEC and/or its CATALENA implementer. Given the CEC's core responsibilities of advancing state energy policy, including demand forecasting, planning and setting efficiency standards, it is reasonable and appropriate for the Commission to partner with the CEC to implement the CATALENA tool. The IOUs are required to provide program participation data to the CEC. Further, in recognition of the value of this tool to facilitate high DER analyses, the Commission and CEC may choose to expand

the use of CATALENA to include data for other DER programs, including but not limited to, building decarbonization, transportation electrification, demand response, and energy storage. The IOUs must provide customer-level DER program data, as specified by the Commission staff, and submit program participation data for DER programs to the CEC within 120 days of the issuance of this decision, to facilitate implementation of the tool.

To move forward with the CATALENA effort, this decision directs the IOUs to allocate the \$2 million specified in D.18-05-041 to a new accounting mechanism (*e.g.*, balancing account or sub-balancing account) for the purpose of transferring those funds to the CEC to develop and maintain the tool. Within 15 days after CPUC staff provide notice to the service list that CPUC and CEC staff have executed a memorandum of understanding or other agreement for the CEC to implement the CATALENA tool, the IOUs must transfer the full amount in this accounting mechanism to the CEC. Within 60 days of the issuance of this decision, the IOUs must submit a joint Tier 1 advice letter to fund and facilitate implementation of the CATALENA project in accordance with this decision's directions.

Because this decision modifies a Commission order, we serve the proposed decision on the service list of A.17-01-013 et al., which is the proceeding in which the Commission adopted D.18-05-041.

## **6. Data Sharing Requirements**

The July 15, 2022 ALJ ruling invited parties to comment on whether the IOUs should be ordered to provide disaggregated data to RENO, upon request, and also whether the IOUs should be ordered to provide disaggregated data to implementers that are contracted to deliver Commission-authorized energy

efficiency programs in their territory, and associated implementation details including the specific data to be provided, frequency, and implementation costs.

### **6.1. Comments of Parties**

In general, the same parties that support requiring the IOUs to provide disaggregated data to RENs – I-REN, SoCalREN, BayREN, 3C-REN and RuralREN (collectively Joint RENs), LGSEC, Recurve, CEDMC and SBUA – also support requiring the IOUs to provide disaggregated data to implementers of Commission-authorized energy efficiency programs. MCE is supportive of 3C-REN’s motion and more generally of sharing data necessary for functional NMEC program administration, but reserves comment beyond these more immediate issues. SBUA caveats its general support for data sharing with a recommendation to either anonymize or randomize non-participant data, which CEDMC also appears to support. With respect to maintaining data security, the Joint RENs, LGSEC and Recurve recommend permitting RENs to designate an agent to manage and handle the data, and several parties include a proposed schematic for how RENs might obtain maximum value from the data without the direct liability of handling sensitive data. Most of these parties recommend monthly data sharing, and that IOUs should incur the costs of data sharing; the Joint RENs and Recurve cite D.16-08-019 as already providing the IOUs with necessary funding for this purpose by permitting them to request a higher proportion of the evaluation, measurement and verification budget, up to 40 percent, to support NMEC and pay for performance programs. In reply comments, SCE counters that D.16-08-019 specified the exact amounts of this funding would be finalized through a collaborative process between program administrators and Commission staff, and that collaborative process did not identify costs related to data sharing.



The IOUs maintain that the Commission has not authorized them to share disaggregated data with the RENs, and that such data sharing requires an explicit order from the Commission and must comply with applicable regulations and IOU tariffs, specifically SoCalGas's Rule 42, SCE's Rule 25, and PG&E's Electric Rule 27; SDG&E asserts more generally that IOUs should be required to share only the amount of data necessary to successfully implement a program.<sup>11</sup> PG&E proposes more detailed data sharing guidelines, including specific principles that reinforce data minimization and privacy, mapping each data field to a specified list of program functions, and guidelines for determining the frequency of data sharing. In reply comments, BayREN and 3C-REN assert many of these proposed guidelines are too detailed and prescriptive, but express amenability with the proposed approach as long as all program administrators are held to the same standard, including IOUs for their own programs. The IOUs also assert, generally, that the costs of data sharing should be incurred by the requesting entity.

With respect to sharing data with third-party implementers, SCE and PG&E state they already provide data to program implementers with whom they contract, suggesting an explicit order directing the IOUs to do so is not necessary. PG&E recommends against ordering the IOUs to share data with third-party implementers with whom they contract, arguing that such an order would interfere with contract negotiations.

## **6.2. Discussion**

The Commission finds it is reasonable and necessary for RENs and

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<sup>11</sup> SDG&E comments, at 48.

third-party implementers (including entities serving as implementers for summer reliability-focused market access programs approved in D.21-12-011) to have access to disaggregated data, as specified in this decision, in order to successfully implement ratepayer-funded energy efficiency programs. Without access to this data, RENs and third-party programs are less likely to achieve energy savings or other identified outcomes to the same extent or as effectively as programs that are able to leverage such data. Individual non-participant meter data can be essential for certain types of program measurement and verification, as well as for targeting and eligibility determinations.

Regarding the specific data required to be shared, PG&E's proposed compliance requirements / guidelines, as modified in BayREN and 3CREN's reply comments, are reasonable and we adopt them in this decision. Specifically, data fields must map directly to one or more of the following program functions:

- Customer targeting;
- Customer eligibility checks;
- Execution of the program for enrolled customers;
- Measurement and evaluation; and
- Eliminating participant double-dipping and/or double-counting of savings (when applicable).

The specific data required to be shared is limited to the following types:

- Customer identification, location (physical address), and premise-related, relevant data including but not limited to characteristics such as single-family/multi-family classification, whether the property has a pool, or installed solar;
- Customer energy usage and usage data related to the premise characteristics described above; and
- Customer program participation (when necessary for evaluating customer eligibility).

Participant data should be provided at least monthly; non-participant data may be provided less frequently, but at least quarterly.

Acknowledging the need to protect customer privacy and to maintain data security, this decision conditions such access on users' attestation that the data will be used only for primary purpose use cases – in this context, energy efficiency program implementation and/or savings measurement – and the user (whether a REN or third-party implementer, or their authorized agent) meets minimum data security requirements of the IOU from which they are requesting data.

Regarding the costs to enable data sharing, allocating these costs to the IOUs is generally consistent with other data sharing activities that may be used by non-IOU portfolio administrators, most notably the costs to enable “click-through” authorization of data sharing for third-party demand response providers.<sup>12</sup> We do not anticipate significant ongoing costs beyond the initial infrastructure costs. We will direct the IOUs to estimate both initial infrastructure and ongoing operational costs, for which they may seek cost recovery via a Tier 2 advice letter to be submitted within 90 days after the issuance of this decision. To the extent an entity requests data at a greater frequency than provided by this decision, or beyond the scope of program functions or associated data types identified in this decision, and the IOU agrees to provide that additional data and/or greater frequency, the entity requesting the data will bear responsibility for such costs. RENs and IOUs may come to a different cost-sharing agreement, which must be documented as an update to their joint cooperation memo for program year 2023 and submitted to CEDARS.

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<sup>12</sup> D.16-06-008, D.17-06-005 and Resolution E-4868.

To afford flexibility for the program administrators to identify a potentially more streamlined and/or cost-efficient framework, the IOUs may instead identify and enable other pathways for RENs, third-party implementers and/or their authorized agents to access needed data for program implementation and evaluation purposes.

The CEC's data warehouse may, at some point, offer data-sharing options to non-IOUs administering and implementing ratepayer-funded energy efficiency programs, such as RENs and third-party implementers. If a REN or a third-party implementer (or their assigned agent) becomes eligible to receive the data described earlier in this section directly from the CEC, the IOUs' obligation to provide such data may be relieved.

## **7. Comments on Proposed Decision**

The proposed decision of ALJs Fitch and Kao in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were timely filed on or before January 13, 2023 by the following parties: BayREN and 3C-REN, jointly; Cal Advocates; CEDMC; I-REN; LGSEC; MCE; PG&E; Recurve; SBUA; SCE; SDG&E; SJVCEO; and SoCalGas.

Reply comments were timely filed on or before January 18, 2023 by the following parties: BayREN and 3C-REN, jointly; I-REN; PG&E; SBUA; SCE; SDG&E; and SoCalGas.

In this section, we discuss the comments of the parties thematically, roughly in the order in which they appear in the text. Where warranted, changes have also been made in response to comments in the body of the decision.

On the topic of performance assurances in third-party contracts, CEDMC largely supports the proposed decision's provisions, but suggests that the Commission track or enable tracking of the number of contracts which require performance assurances, to determine whether requirements on this issue should be revisited. While we do not explicitly order this here, we do expect Commission staff will continue to monitor the inclusion of performance assurances in contracts and we will consider further action if this continues to create a barrier, particularly for disadvantaged or small businesses.

SBUA suggests that the Commission explicitly list specific types of performance assurances that should be authorized as appropriate, including letters of credit and purchase order financing. While we support exploration of alternative forms of performance assurances between the IOUs and bidders, we do not endorse particular forms of credit assurance here, but rather prefer to leave that to the parties to negotiate, depending on the circumstances.

SBUA also refreshes its comments relating to a concern about market concentration among a small number of third-party contractors in the energy efficiency market. This remains a topic of interest to the Commission, but it is not among the items we address in this decision, and therefore we leave these comments for possible future consideration.

On the topic of cybersecurity insurance, CEDMC suggests that in addition to the disclosure and discussion requirements, we also establish criteria for reviewing the appropriateness of cybersecurity insurance and monitor its application. Here again, we note that Commission staff is aware of the issues, but we will not impose additional criteria in this decision.

SoCalGas also comments on the importance of cybersecurity insurance providing financial and other protections for customers participating in energy

efficiency programs, but prefers that the Commission not require the IOUs to provide “justification” to the PRGs and IEs. We have modified the language slightly to require explanation of the rationale.

Several parties commented on the provisions of the proposed decision related to the MAP-style programs and their relationship to the third-party requirements. First, Recurve suggests that we extend the installation deadline for the summer reliability MAP program adopted in D.21-12-011 to ensure there is no hiatus in the program. While continuation and possible expansion of implementation of the MAP approved in D.21-12-011 is being considered in the energy efficiency portfolio application proceedings (A.22-02-005 et. al.), Recurve’s suggestion is a practical one for the transition and we have included a deadline extension to March 31, 2024 in the revisions to this decision. This will ensure that there is no gap in the delivery of benefits from this program.

Cal Advocates, in its comments, asks us to clarify the future cost-effectiveness requirements and implementation of the MAP approach for programs. This issue is in the scope of A.22-02-005 et. al. and we will not address this here, as this decision does not and was not intended to make any determinations about the applicability of exceptions to rules for MAP style programs in the future.

Similarly, Cal Advocates asks us to make changes to how independent evaluators are selected for individual solicitations. This decision was never intended to address those types of issues, and the Commission’s approach to IEs is longstanding. The fact that this decision asks the IEs to be informed of certain IOU activities does not change the basic role or our approach.

Cal Advocates also asks us to require the IOUs to provide a thorough accounting of their portfolio administration cost components from their 2024-

2027 program and budget applications in a Tier 2 advice letter. The evaluation and review of these costs, among other things, is within the scope of the A.22-02-005 et. al. proceedings, and we will not make further requirements in this decision.

CEDMC expresses concern that the infrastructure to support TSB as a primary metric in third-party contracts may not be ready yet until at least 2024. We have clarified in this decision that energy savings metrics are also acceptable to be used in third-party contracts.

CEDMC also asks us to further specify feedback required to be provided to unsuccessful third-party bidders. We support constructive feedback being offered to unsuccessful bidders, and encourage the IOUs to provide such feedback, but prefer not to specify all of the requirements recommended by CEDMC. We will continue to monitor this process and consider making further requirements in the future, if necessary.

SDG&E and PG&E request that the confidentiality matrix not be adopted in this decision, but instead be subjected to additional stakeholder input and process. SDG&E is specifically concerned that the matrix not apply to existing contracts. We clarify that the matrix only applies from the effective date of this decision going forward, and does not disturb the confidentiality treatment under any existing third-party contracts. Thus, we do not remove the confidentiality matrix from this decision, as it has clarification benefits for future contracts and procedures.

All of the IOUs comment that the requirement to disclose contract extensions to the PRG and IE should be removed. Several of the comments suggest that we would be requiring a change in role for the IE, in particular, to follow all contracts all the way through their life, instead of just during the

solicitation process. We clarify that the intent is one of disclosure to and discussion with the PRGs and the current IE pool, but not necessarily to include the IE that originally oversaw the solicitation that produced the contract being extended. The language in decision has been clarified on this point, as well as to provide some additional clarity on timing of the disclosure and discussion.

All of the IOUs also request clarifications to the discussion about administrative costs relative to direct implementation non-incentive costs, citing back to D.09-09-047, which originally defined the categories. Clarifying language has been added to address these comments and make clear that although there are some types of administrative and strategic planning costs (such as engineering costs specific to the third-party program) that may be counted as direct implementation non-incentive, general portfolio oversight and planning costs do not count as direct implementation.

On the topic of SEM-style programs, MCE comments that it strongly supports the proposed decision's approach. SoCalGas volunteers, in lieu of the staff study discussed in the proposed decision, to add the SEM issues to a study that it is already undertaking. While we appreciate the offer and teamwork, and there appear to be opportunities to leverage the work that SoCalGas is doing, we prefer to leave the particular questions of the appropriate NTGR and EUL assumptions to a staff-managed evaluation.

Cal Advocates objects to the expansion of SEM beyond the industrial sector, alleging legal error pursuant to Public Utilities Code 451, which requires just and reasonable rates. Cal Advocates claims we are omitting safeguards from unreasonable charges when expanding SEM beyond the industrial sector. We disagree. All SEM programs are subject to stringent participation and program tracking requirements, designed to reduce ratepayer risk. SEM programs are also



subject to program evaluations, led by the Commission, which would identify programs that are not meeting savings objectives or are not amenable to SEM program designs. Further, recent evaluations of the existing SEM programs support the current NTGR and EUL assumptions. Finally, the staff-managed study described above and in the text of the decision will also shed more light on these issues.

On the topic of the Commission-managed database tools, including CET and CEDARS, the IOUs in their comments request clarification of what they are funding, including not only maintenance but also development of the tools. We have made changes to the decision accordingly.

SDG&E requests to increase the IOU share of EM&V funding from a maximum of 40 percent to 50 percent. We decline to do that at this time, because we don't see the current cap as a barrier to supporting the database tools' maintenance and further development. Likewise, we decline to endorse SCE's request to be able to fund this activity out of the overall portfolio budget; we prefer to keep it within the EM&V category for now.

With respect to some concerns about the use of the Recurve Flex Value tool, this decision has been modified to make clear that we will evaluate the tool, along with others, and may use it after it is evaluated, but have no plans to formally adopt it exclusively.

CEDMC continues to request that we add the implementers to the Reporting PCG that is overseeing the database tools. We continue to decline that request, but do accept, in revised language, CEDMC's suggestion to incorporate a stakeholder analysis structure in the annual development report for the database tools, discussing the disposition of suggestions or perspectives offered by stakeholders and why they were or were not incorporated.

I-REN, BayREN, and 3C-REN also request that Commission staff remain involved in the Reporting PCC, and we assure the RENs that this will continue to be the case.

In response to comments regarding CATALENA, the decision has been revised to provide more time for the IOUs – including SoCalGas, which the proposed decision inadvertently omitted – to submit the joint Tier 1 advice letter to fund and facilitate implementation of the tool, and to explicitly require the IOUs to provide customer-level DER program data as part of facilitating implementation of the tool.

In response to comments regarding data sharing requirements, the decision has been revised to clarify that non-participant data should be provided at least quarterly, and to clarify the conditions under which an entity's request for data beyond the scope identified in the decision might be accommodated. We also modify the decision to provide more time for the IOUs to provide disaggregated data in response to a request for such data, and to specify that a requestor must consult with an IOU prior to submitting its request, to facilitate the IOU fulfilling the request efficiently. Finally, we modify the decision to provide more time for the IOUs to submit the Tier 2 advice letter, which they may submit individually or jointly, for estimating and requesting cost recovery to enable data sharing.

## **8. Assignment of Proceeding**

Genevieve Shiroma is the assigned Commissioner and Julie A. Fitch and Valerie U. Kao are the assigned ALJs in this proceeding.

## **Findings of Fact**

1. Provisions of D.18-01-004 govern the third-party solicitation process that the IOUs are required to undertake.

2. Provisions of D.18-10-008, as well as D.19-01-003, govern the terms and conditions of third-party contracts, both standard and modifiable.

3. Now that the third-party solicitation process is well underway, it is reasonable for the Commission to prioritize high-impact changes to some provisions of D.18-01-004 and D.18-10-008 in order to improve results.

4. Requirements for performance assurances can be expensive, have a big impact on implementers, and are appropriate for higher-risk contracts.

5. Requirements for cybersecurity insurance are appropriate in circumstances where there are identified risks.

6. There is no inherent conflict between a MAP approach and the third-party solicitation requirements of D.18-01-004. The IOUs are free to solicit for a market access implementer or implementers.

7. General Order 156 is amended from time to time by the Commission in order to incorporate new types of businesses. Most recently, it was amended to include businesses owned by persons with disabilities.

8. D.21-05-031 adopted a universal metric of TSB for energy efficiency portfolios.

9. The Commission has adopted confidentiality matrices for procurement, including in D.06-06-066 for supply-side solicitations.

10. The definition of PRG conflict of interest from D.05-01-055 applied to PRG participation in general creates a barrier to individuals from state academic institutions serving on PRGs.

11. Making changes to existing contracts would create unnecessary disruption in implementation and should not be required, though may be voluntarily negotiated.

12. Lack of uniformity in accounting for certain administrative costs has been a longstanding and consistent issue in energy efficiency portfolios.

13. The third-party solicitation process has matured such that an annual stakeholder meeting should be sufficient and semi-annual workshops should no longer be required.

14. The SEM approach can be generally applicable beyond the industrial sector.

15. The current collaborative process for overseeing SEM programs is working well and should be continued, with the potential for creation of a PCG to help revise the guidebooks.

16. The current PCG for Reporting and Data Management is working well and should be continued.

17. A paid project coordinator and facilitator, as well as development of a formal guidance document, will help stakeholders to understand the reporting and data structures for CEDARS, CET, and related tools, and to provide input in a structured manner.

18. Recurve has developed an open-source code called Flex Value that can be evaluated for potential use for assessing NMEC projects.

19. D.18-05-041 directed the IOUs to allocate \$2 million to expand the Energy Atlas, and to select a statewide lead to oversee development of a statewide energy use database, now referred to as CATALENA.

20. SCE, designated as the statewide lead to implement CATALENA, has not issued an RFP to implement the CATALENA tool.

21. Deployment and management of the CATALENA tool is consistent with the CEC's core responsibilities of advancing state energy policy, including demand forecasting, planning and setting efficiency standards.

22. Without access to disaggregated data, RENs and third-party programs are not able to achieve energy savings or other identified program outcomes to the same extent or as effectively as programs that are able to leverage such data.

### **Conclusions of Law**

1. Performance assurances for third-party contracts should be a modifiable contract term, and the starting point for negotiation should be that no performance assurances or securities are required.

2. If an IOU seeks performance assurances in third-party contracts, it should be required to provide to the PRG and IE for review and comment its analysis of the risk the contract presents to ratepayers, and explain how the performance security is appropriate to the contract size, scope, and associated risks.

3. Any performance assurance funds that are collected from third-party implementers should be returned to the IOU's overall energy efficiency budget, and should be described in the Annual Reports and any advice letter filed to close the program.

4. Table 2 in the modifiable contract terms and conditions originally adopted in D.18-10-008 should be removed.

5. Insurance requirements should be disclosed to third-party bidders when a solicitation is initiated.

6. If an IOU proposes to require cybersecurity insurance as part of a solicitation, that requirement should be disclosed, along with the rationale for it, and discussed with the PRG and IE prior to a solicitation being released to market and when the final requirements are negotiated in the contract based on the specific program design.

7. The IOUs should be able, but not required, to use a two-stage solicitation process for third-party contracts. The requirement for a two-stage process should be removed.

8. The definition of diverse business enterprises in the standard and modifiable third-party contract terms and conditions should be amended to include businesses owned by persons with disabilities.

9. The definition of diverse business enterprises in the standard and modifiable third-party contract terms and conditions should be amended by the IOUs to incorporate any future changes to GO 156.

10. The TSB metric adopted in D.21-05-031 should be included in the standard and modifiable terms and conditions for third-party contracts. Other metrics may also be used.

11. Adoption of a confidentiality matrix for energy efficiency purposes will help clarify what information is automatically public or confidential. The confidentiality matrix in Attachment C is reasonable and should be adopted.

12. The IOUs should be required to disclose to their PRG and current IE pool when they execute contract extensions of third-party energy efficiency programs, and must include an overview of their long-term plans to continue with extensions or re-issue solicitations, along with information about the success of the existing programs or contracts.

13. An individual employed by a state academic institution should not be determined to have a financial conflict of interest solely by virtue of employment with the institution. Such an individual may remove a conflict of interest in an individual solicitation by recusing him/herself in the individual solicitation and need not be banned from PRG participation entirely.

14. Changes to the third-party terms and conditions included in this decision should be applied on a going-forward basis in solicitations where the request for proposal has not yet been issued.

15. Changes to the third-party terms and conditions included in this decision should be applied to new local government partnerships, but not to new Energy Savings Assistance program contracts.

16. Under the provisions of D.21-05-031, if a change is made to a third-party program such that it would be considered “new” under the definition in D.21-05-031 ordering paragraph 12, then a Tier 2 advice letter is required. Amendments to existing third-party programs that do not otherwise meet the criteria for being new do not require a Tier 2 advice letter.

17. The IOUs should use a consistent accounting approach for administrative costs related to third-party contracts.

18. The IOUs should be required to work through the Reporting PCG to develop a joint approach following the guidance in section 2.11.2 in this decision on the detailed accounting methodology to be used for administrative costs for third-party contracts. This should be submitted to Commission staff to inform the CEDARS data specification for 2023 program tracking claims, and should be applied in the 2023 true-up advice letters and thereafter.

19. Commission staff should hold at least an annual stakeholder workshop for the third-party solicitation process.

20. Portfolio administrators should be authorized to expand the SEM approach beyond the industrial sector utilizing redlined versions of the existing guidebooks required to be posted on the Commission’s PDA and CEDARS.

21. All SEM programs may use the current NTGR assumption of 1.0 and the longer EUL assumptions.

22. Within one year, Commission staff should complete a study to determine if the NTGR and EUL assumptions for SEM remain appropriate for all sectors and applications.

23. Commission staff should convene an SEM-specific PCG, if deemed helpful to all parties involved in SEM implementation.

24. All portfolio administrators should be members of the Reporting PCG overseeing the CEDARS, CET, and associated calculators and databases.

25. The Reporting PCG should continue to serve as the managing body for CEDARS, CET, and associated calculators and databases and should develop a scope of work for one of the IOUs to solicit both a project coordinator responsible for developing a governance document and an annual development plan and any necessary contracts for operation, maintenance, and development of CEDARS, CET, and certain related tools.

26. The Recurve tool Flex Value should be evaluated by the Reporting PCG for its appropriate application to NMEC projects, along with other options for updating the CEDARS and CET systems to accommodate NMEC.

27. It is reasonable to relieve the IOUs of responsibility for deployment and ongoing management of the CATALENA tool, and to instead seek a memorandum of understanding with the CEC for this responsibility.

28. In recognizing the value of CATALENA to facilitate high DER analyses, the Commission intends for the CATALENA tool to include making disaggregated demand data accessible to qualifying users. Further, the Commission and CEC may choose to expand the use of CATALENA to include data for other DER programs, including, but not limited to, building decarbonization, transportation electrification, demand response, and energy storage.



29. Due process requires that this proposed decision be served on the service list of A.17-01-013 et al.

30. It is reasonable to require the IOUs to share disaggregated data with RENS and third-party implementers and/or their authorized agents, provided they meet minimum data security requirements, to implement and evaluate ratepayer-funded energy efficiency programs. Participant data should be provided to RENS, third-party implementers, and/or their authorized agents at least monthly and non-participant data should be provided at least quarterly.

31. It is reasonable to allocate the costs to enable data sharing to the IOUs.

## **O R D E R**

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

1. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company shall use the standard and modifiable third-party terms and conditions in Attachments A and B to this decision, as modified from the form originally adopted in Decisions 18-10-008 and 19-01-003.

2. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company shall not require performance assurances as a standard, non-modifiable term in third-party contracts. If the investor-owned utility wishes to include performance assurances in negotiations with third-parties, the utility must present to their procurement review group and independent evaluator an analysis of the risk the contract presents to ratepayers and an explanation of how a proposed performance security is appropriate to the contract size, scope, and associated risks. Performance assurance requirements shall not be added after a contract has

been executed unless the contracting parties mutually agree to amend the contract to modify the performance assurance provisions.

3. Any performance assurance funds that are collected by Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company from third-party implementers shall be returned to their respective energy efficiency budgets and be described in their Annual Reports and any advice letters submitted to close the associated program.

4. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company shall disclose for review and comment proposed cybersecurity insurance requirements for third-party solicitations with their procurement review group and independent evaluator prior to a solicitation being released to market and when the final requirements are negotiated based on the specific program design.

5. The final installation deadline for the summer reliability market access program authorized in Decision 21-12-011 shall be extended from August 1, 2023 to March 31, 2024.

6. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company shall define diverse business enterprises to include businesses owned by persons with disabilities. If General Order 156 is amended by the Commission in the future, the changes shall be automatically updated in the third-party standard and modifiable terms and conditions.

7. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company

shall submit schedules for third-party solicitations to the procurement review group, including plans for single- or two-stage solicitations, as well as rationale for the chosen approach. Decision 18-01-004 is modified such that a two-stage solicitation process is no longer required to be the predominant approach.

8. The confidentiality matrix in Attachment C to this decision shall be used for purposes of energy efficiency programs and solicitations from the effective date of this decision forward and does not disturb the confidentiality treatment under third-party contracts in place prior to the effective date of this decision.

9. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company shall disclose and discuss with their procurement review group and current independent evaluator pool when they enter into an extension of an existing third-party energy efficiency program contract, and shall provide an overview of their long-term plans to continue to negotiate contract extensions and/or re-issue solicitations in the targeted sector or area, along with information about the success of the existing programs or contracts.

10. For purposes of third-party solicitations and participation in a procurement review group (PRG), an individual shall not be defined to have a financial conflict of interest solely by virtue of employment with a state academic or educational institution. An individual PRG member employed by a state academic or educational institution may resolve a financial conflict of interest by recusal from an individual solicitation without being banned entirely from PRG participation.

11. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company shall submit a memorandum to Commission staff to inform the California

Energy Data and Reporting System data specification for the 2023 program tracking claims.

12. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company shall apply consistent accounting methodology for portfolio administration and third-party costs in their 2023 true-up advice letter in September 2023 and thereafter.

13. Changes to the third-party contract terms and conditions contained in this decision shall apply going forward to any solicitations where the request for proposals has not yet been issued. These changes also apply to local government partnerships, pursuant to Decision 19-08-006. The changes shall not apply to contracts related to the Energy Savings Assistance program and shall not apply to existing contracts already executed.

14. Any energy efficiency portfolio administrators may begin offering strategic energy management style programs beyond the industrial sector, based on modified versions of the existing guidebooks, that must be posted on the Commission's Public Documents Area.

15. All portfolio administrators shall be members of the Reporting Project Coordination Group (PCG). One utility portfolio administrator selected from among the Reporting PCG membership shall solicit and hire, by no later than the end of the first quarter of 2024, a project coordinator, to develop a governance document and an annual development plan for the California Energy Data and Reporting System (CEDARS), Cost-Effectiveness Tool, and other associated tools and calculators. The lead utility portfolio administrator shall also solicit and hire a web developer and a database administrator to support and enhance the CEDARS website and databases, including the Cost-Effectiveness Tool (CET) and

other portfolio tools. Commission staff will work with members of the Reporting PCG to develop a scope of work for each of these items, including a list of tools within the scope of this work. The lead utility portfolio administrator shall file a Tier 2 Advice Letter by no later than June 30, 2023 describing the impacts to the evaluation, measurement, and verifications budgets, which the utilities are required to use to fund this work, and a scope of work for both the project coordinator and the development and maintenance of the various reporting tools. A section on CEDARS, CET, and other developmental expenditures shall be included in the annual development plan.

16. No later than 60 days after the issuance of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company must submit a joint Tier 1 Advice Letter to fund and facilitate implementation of the California Analysis Tool for Locational Energy Assessment project in accordance with Section 5 of this decision.

17. Within 15 days after California Public Utilities Commission (Commission) staff provide notice to the service list that Commission and California Energy Commission (CEC) staff have executed a memorandum of understanding or other agreement for the CEC to implement the California Analysis Tool for Locational Energy Assessment, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company must transfer the full amount in the accounting mechanism required by Ordering Paragraph 16 to the CEC.

18. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company must provide customer-level distributed energy resources program data, as

specified by Commission staff, to facilitate implementation of the California Analysis Tool for Locational Energy Assessment. Initial provision of this data must occur within 120 days of the issuance of this decision, with the frequency of subsequent data provisions to be specified by Commission staff. Provision of confidential customer data pursuant to this order shall comply with applicable customer privacy and data security requirements.

19. Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE), and Southern California Gas Company (SoCalGas) must share disaggregated data requested by regional energy networks and third-party implementers and/or their authorized agents, as described in Section 6 of this decision, within ten days after notifying the requestor that the requestor meets the following requirements:

- A current cyber security review by each investor-owned utility (IOU) supplying confidential information.
- A non-disclosure agreement directly with each IOU supplying confidential information.
- The ability to receive secure data transmissions from the IOU. For some data sharing platforms, this may include the ability to access IOU systems via an application programming interface.
- A current contract for the program, either as the program administrator or as prime or sub-contractor with a statement of work that requires all the confidential data received.

Prior to the request, the requestor shall consult with the IOU regarding the data to be provided (specifically, the fields, observations, and format) to facilitate the IOU fulfilling the request efficiently.

PG&E, SDG&E, SCE, and SoCalGas must file and serve a copy of any such notice in Rulemaking 13-11-005 or a successor proceeding. PG&E, SDG&E, SCE,

and SoCalGas may be relieved of these requirements if they identify and enable an alternative pathway for regional energy networks, third-party implementers and/or their authorized agents to access needed disaggregated data for program implementation and evaluation purposes.

20. No later than 90 days after the issuance of this decision, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE), and Southern California Gas Company (SoCalGas) must each submit, individually or jointly, a Tier 2 Advice Letter to estimate and request authorization to recover one-time infrastructure costs and ongoing operational costs to enable data sharing with regional energy networks and third-party implementers and/or their authorized agents. PG&E, SDG&E, SCE, and SoCalGas may be relieved of this requirement if they reach an alternative cost-sharing agreement with regional energy networks; this agreement must be documented as an update to their joint cooperation memo for program year 2023 and submitted to the California Energy Data and Reporting System.

21. Rulemaking 13-11-005 remains open.

This order is effective today.

Dated February 2, 2023, at San Francisco, California.

ALICE REYNOLDS

President

GENEVIEVE SHIROMA

DARCIE L. HOUCK

JOHN REYNOLDS

KAREN DOUGLAS

Commissioners