BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application of Pacific Gas and Electric Company for Compliance Review of Utility Owned Generation Operations, Portfolio Allocation Balancing Account Entries, Energy Resource Recovery Account Entries, Contract Administration, Economic Dispatch of Electric Resources, Utility Owned Generation Fuel Procurement, and Other Activities for the Record Period January 1 through December 31, 2022 U 39 E	Application 23-02-018

CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S REPLY IN SUPPORT OF MOTION FOR COMMISSION REVIEW OF ADMINISTRATIVE LAW JUDGE'S EVIDENTIARY RULINGS

PUBLIC VERSION

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California Community Choice Association (CalCCA)[1] submits this *Reply in Support of its Motion for Commission Review of the Administrative Law Judge's Evidentiary Rulings* (Reply) pursuant to Rule 11.1(f) of the California Public Utilities Commission's Rules of Practice and Procedure.[2] The Administrative Law Judge (ALJ) authorized CalCCA to file this Reply in a procedural email dated March 12, 2024.

CalCCA's Motion seeks Commission review of three evidentiary rulings issued by the ALJ (Rulings). The Commission should review the Rulings because collectively, the Rulings

[1] California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Ava Community Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, Energy for Palmdale's Independent Choice, Lancaster Energy, Marin Clean Energy, Orange County Power Authority, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Santa Barbara Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

[2] *State of California Public Utilities Commission, Rules of Practice and Procedure, California Code of Regulations Title 20, Division 1, Chapter 1* (May 2021): https://webproda.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/rules-of-practice-and-procedure-may-2021.pdf.

erroneously deny CalCCA the opportunity to address Pacific Gas & Electric Company's (PG&E) sales of excess Resource Adequacy (RA) in 2022—an issue that is squarely within the scope of the instant proceeding and directly impacts the Power Charge Indifference Adjustment (PCIA) rates that community choice aggregator (CCA) customers pay.

PG&E's Response to CalCCA's Motion gets several things wrong, but one thing right: the Commission's Rules of Practice and Procedure permit the Commission to review evidentiary rulings during the pendency of a proceeding "in extraordinary circumstances where prompt decision by the Commission is necessary to promote substantial justice."[3] The Rulings present precisely the circumstances where prompt Commission review is appropriate because if the Commission were to wait to review the Rulings until the matter is submitted, parties would be forced to brief PG&E's RA sales based only on PG&E's evidence—a one-sided and substantially unjust outcome.

PG&E makes various arguments defending the Rulings, but none of those arguments have merit. CalCCA addresses those arguments in turn below. Fundamentally, PG&E appears to believe prior Commission decisions affirming its RA sales framework insulate PG&E from thorough scrutiny of its RA sales activities in this proceeding. While PG&E concedes the Commission may examine PG&E's conduct of the solicitations required by its sales framework, it suggests the Commission can go no further without running into prior decisions and exceeding the scope of this proceeding. Neither the Commission's prior decisions nor the Assigned Commissioner's Scoping Memo and Ruling, however, limit the Commission in the manner PG&E proposes. As CalCCA's Motion explains, Energy Resource Recovery Account (ERRA) Compliance proceedings typically involve a review of the investor-owned utility's RA procurement and sales activities during the

[3] *Id.* at Rule 13.6(c).

record year—including, but not limited to, the utility's RA sales solicitations. As such, the facts of PG&E's RA sales activities are facts of consequence to three separate scoping issues in this proceeding: Scoping Issue 1 (concerning PG&E's prudent management of its RA resources); Scoping Issue 3 (concerning PG&E's RA-related accounting entries), and Scoping Issue 5 (concerning PG&E's RA sales activities consistent with its Bundled Procurement Plan). The Commission should therefore reverse the Rulings.

I. ARGUMENT

A. The ALJ's Evidentiary Rulings Present Precisely the Circumstances that Warrant Commission Review

PG&E acknowledges the Commission's Rules of Practice and Procedure allow the Commission to review evidentiary rulings during the pendency of a proceeding "in extraordinary circumstances where prompt decision by the Commission is necessary to promote substantial justice."[4] PG&E further concedes the Commission has previously reviewed evidentiary rulings during the pendency of a proceeding where those rulings may present possible ramifications in other proceedings.[5] PG&E argues the ALJ's evidentiary rulings do not warrant Commission review, however, because it sees nothing extraordinary about those rulings nor any possible ramifications on other proceedings.[6] Alarmingly, PG&E insists there is nothing to see here because the utility's testimony and responses to discovery discuss its RA sales activities during the 2022 record period.[7]

PG&E presents a tremendously utility-centric view of Commission proceedings. Record development should not—and typically does not—end with the utility's evidence. Robust record

[4] PG&E Response at 9.
[5] *Id*. at 8-9.
[6] *Id*. at 10-12.
[7] *Id*. at 10.

development requires meaningful participation by intervening parties. To that end, the Commission's Rules of Practice and Procedure emphasize "the technical rules of evidence . . . need not be applied" in Commission proceedings and require the Commission preserve "the rights of parties to meaningfully participate in the proceeding and to public policy protections [.]"[8]

In this proceeding, CalCCA is the only intervening party seeking to present evidence contesting PG&E's RA sales activities during the record period. As such, by preventing the Commission from considering the vast majority of CalCCA's evidence, the ALJ's evidentiary rulings not only preclude CalCCA from meaningfully participating in this proceeding, but also essentially limit the record regarding PG&E's 2022 RA sales activities to PG&E's evidence. That is why the ALJ's evidentiary rulings present precisely the circumstances that warrant prompt Commission review. Absent Commission review at this stage, parties would be forced to brief a one-sided record, only to resume constructing the record at some later date after the matter is submitted to the Commission. That outcome would not promote "substantial justice" as Rule 13.6 requires.

PG&E also overstates the ramifications the rulings must have on San Diego Gas & Electric Company's (SDG&E) 2022 ERRA Compliance proceeding in order to warrant Commission review. PG&E argues the rulings do not bind SDG&E's proceeding,[9] but CalCCA never suggested the rulings have that effect. Indeed, as PG&E itself observes, it is well-established that Commission decisions, let alone ALJ rulings, have no collateral estoppel effect.[10] Thus, it would be illogical for the Commission to require an evidentiary ruling "bind" a separate proceeding before reviewing that ruling. The bottom line is, while PG&E strains to draw distinctions between

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8 Commission's Rule of Practice and Procedure 13.6(a).

9 PG&E Response at 11.

10 *Id*.

the instant proceeding and SDG&E's 2022 ERRA Compliance proceeding, the two proceedings have manifest similarities. Most important among those similarities, intervenors in each proceeding are investigating a substantially similar issue—the utility's efforts to sell excess RA during the summer of the record year—and are doing so in parallel. Nothing compels the parties in SDG&E's ERRA Compliance proceeding to turn a blind eye to the ALJ's rulings in PG&E's parallel ERRA Compliance proceeding, particularly when those rulings concern the same issue; it is far more plausible that those rulings would inform the arguments raised by parties to the SDG&E proceeding. Thus, the ALJ's evidentiary rulings plainly implicate SDG&E's ERRA Compliance proceeding and warrant prompt Commission review.

B. The Commission Should Reverse the ALJ's Evidentiary Rulings

1) CalCCA Does Not Seek to Invalidate Any Prior Judgment or Order of the Commission

PG&E argues CalCCA's efforts to scrutinize PG&E's 2022 RA sales activities in this proceeding constitute a "collateral attack" on prior Commission decisions.[11] PG&E's argument fails because CalCCA does not seek to invalidate any judgment or order of the Commission. The prior decisions PG&E references—Resolution E-4998,[12] D.22-04-039,[13] and Energy Division's disposition of AL 6306-E and 6306-E-A—each resolved questions that, while conceptually related, are distinct from the questions CalCCA seeks to investigate in this proceeding. Those questions are principally: "When did PG&E identify excess RA during the 2022 record period?"

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[11] *Id*. at 13.

[12] [Redacted] Resolution E-4998. *Request by Pacific Gas and Electric Company to Modify its 2014 Conformed Bundled Procurement Plan* (May 30, 2019): https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M297/K200/297200032.PDF.

[13] Decision (D.) 22-04-039, *Order Denying Rehearing of Decision 21-05-030*, Rulemaking (R.) 17-06-026 (Apr. 7, 2022): https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M467/K470/467470751.PDF.

and "What actions did PG&E take, consistent with Appendix S, to make its excess RA available to other load serving entities after identifying that excess?"

Resolution E-4998 approved PG&E's Appendix S framework. That framework "describes the standards for PG&E to sell [RA] products" and is intended to "provide clarity for PG&E and the market about PG&E's activities and ensure actions taken now do not adversely impact future actions or regulatory requirements under consideration in the PCIA and RA OIRs."[14] Nothing in Resolution E-4998 prohibits the Commission from evaluating PG&E RA sales efforts beyond the solicitations required by Appendix S. Rather, in its Resolution approving Appendix S, the Commission noted only that it "[did] not believe that it is unreasonable for PG&E to modify its activities such that sales of its energy and RA products "principally originate through PG&E-held solicitations.""[15] CalCCA neither seeks to reverse the Commission's approval of Appendix S in this proceeding nor does it contend PG&E's sales of RA products *should not* have principally originated through PG&E-held solicitations in 2022. CalCCA's testimony and the evidence it seeks to elicit through hearing, therefore, does not constitute a collateral attack on Resolution E-4998.

Decision 22-04-039 denied an application for rehearing of D.21-05-030[16] filed by CalCCA and several CCAs[17]. As PG&E notes, D.22-04-039 declined to grant rehearing of D.21-05-030, which did not adopt a proposal aimed at allocating departing load customers a proportional share

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[14] Advice Letter 5473-E at 2-3.

[15] Resolution E-4998 at 7.

[16] D.21-05-030, *Phase 2 Decision on Power Charge Indifference Adjustment Cap and Portfolio Optimization,* R.17-06-026 (May 20, 2021): https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M385/K738/385738144.PDF.

[17] *California Community Choice Association, Central Coast Community Energy, East Bay Community Energy, Peninsula Clean Energy, Silicon Valley Clean Energy Authority, and City Of San José, Administrator of San José Clean Energy's Application for Rehearing of Decision 21-05-03*0, R.17-07-026 (June 23, 2021): https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M389/K957/389957193.PDF.

of the investor-owned utilities' (IOU) RA resources recovered in the PCIA. While CalCCA supported that allocation proposal in the PCIA Order Instituting Rulemaking, it has not raised that proposal in this proceeding. CalCCA's testimony and the evidence it seeks to elicit through cross examination, therefore, does not constitute a collateral attack on D.22-04-039.

Finally, PG&E submitted Advice Letters 6306-E and 6306-E-A (Appendix S Justification ALs) in 2021 to justify its methodology for determining how much of its PCIA-eligible RA is reserved to meet the Commission's and California Independent System Operator's regulatory requirements under California's RA program in accordance with its BPP.[18] Energy Division approved the Appendix S Justification ALs, finding PG&E's justification for its methodology for reserving PCIA-eligible RA capacity meets the requirements of D.21-05-030.[19] Whereas CalCCA challenged PG&E's methodology for reserving RA in a protest to the Appendix S Justification ALs, CalCCA has not challenged that methodology in this proceeding. CalCCA's testimony and the evidence it seeks to elicit through hearing, therefore, does not constitute a collateral attack on Energy Division's disposition of the Appendix S Justification ALs.

In sum, while the Commission's prior decisions affirm PG&E's sales framework, nothing in those decisions insulates PG&E from scrutiny of its treatment of excess RA during the record period consistent with that framework in an ERRA Compliance proceeding. That is exactly what CalCCA's testimony and intended cross examination seek to evaluate.

PG&E nevertheless takes the position that in scrutinizing PG&E's excess RA sales, the Commission must only examine PG&E's compliance with the mandatory terms in Appendix S,

[redacted]

[18] D.21-05-030, Ordering Paragraph 11.

[19] Energy Division Disposition of Advice Letters 6306-E and 6306-E-A at 6 (Apr. 18, 2022).

[redacted].[20] In PG&E's view, the Commission must not examine PG&E's actions consistent with the permissive terms in Appendix S, [redacted]. PG&E invents this distinction. Nothing in Resolution E-4998, D.22-04-039, or Energy Division's disposition of the Appendix S Justification ALs suggests the Commission intended to limit its scrutiny of PG&E's excess RA sales to a review of PG&E's compliance with the mandatory terms in Appendix S. Importantly, PG&E's position is out of step with the Scoping Memo in this proceeding. The Scoping Memo does not ask whether PG&E's RA sales complied with the mandatory requirements in Appendix S, but rather whether PG&E administered RA sales "consistent with its Bundled Procurement Plan."[21] PG&E's RA sales "consistent with its Bundled Procurement Plan" include [redacted]. CalCCA's testimony and intended cross examination, which focus on PG&E's efforts to sell excess RA, therefore do not collaterally attack any prior Commission decision and are directly relevant to the scope of this proceeding.

2) CalCCA's Testimony and the Evidence It Seeks to Elicit Through Hearing Are Relevant to Scoping Issues 1, 3 and 5

CalCCA's Motion for Commission Review explains its stricken testimony and the evidence it seeks to elicit through hearing are relevant to Scoping Issues 1, 3 and 5 under the broad definition of relevancy applicable in Commission proceedings.[22] The facts of PG&E's RA sales activities are relevant to Scoping Issue 5 because they tend to prove PG&E did not administer RA

[20] PG&E Response at 16 (arguing CalCCA's evidence is "not aimed at assessing PG&E's compliance with Appendix S"); *id*. at 17 (arguing "the relevant question is whether PG&E complied with the *requirements* of Appendix S to the BPP." (emphasis *sic*)).

[21] *Assigned Commissioner's Scoping Memo and Ruling*, A.23-02-018 (June 2, 2023), at 3: https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M510/K525/510525229.PDF.

[22] CalCCA Motion at 12-13.

sales consistent with Appendix S of its Bundled Procurement Plan. They are also relevant to Scoping Issue 3 because those facts tend to prove PG&E's RA-related entries recorded to the PABA are not reasonable, appropriate or in compliance with Commission decisions. Finally, the facts of PG&E's 2022 RA sales activities are relevant to Scoping Issue 1 because they tend to prove PG&E did not prudently manage its RA resources during the record period.

PG&E's Response repeats many of the arguments it raised in its Motion to Strike, and those arguments do not bear scrutiny. With respect to Scoping Issue 5, PG&E insists "the relevant question is whether PG&E complied with the requirements of Appendix S to the BPP," even though the actual language of that Scoping Issue asks a different question altogether: "[w]hether PG&E administered resource adequacy procurement and sales consistent with its Bundled Procurement Plan." As CalCCA has already explained, PG&E's activities "consistent with its Bundled Procurement Plan" include [redacted]. Therefore, CalCCA's attempts to examine PG&E's bilateral RA sales fall within Scoping Issue 5.

With respect to Scoping Issue 3, PG&E argues the issue of whether its entries are reasonably and appropriately recorded to its balancing accounts (ERRA and PABA) is "entirely unrelated to whether PG&E made reasonable attempts to sell excess RA" because "the balancing account entries do not drive PG&E's sales efforts, the BPP does."[23] PG&E ignores the inverse relationship, however. The reasonableness of PG&E's attempts to sell RA go to the *amount* of RA PG&E sold during the record year, which in turn impacts PG&E's accounting entries to the PABA.

Finally, with respect to Scoping Issue 1, PG&E dismisses language from prior Commission decisions stating that prudent contract administration consistent with Standard of Conduct (SOC)

[23] PG&E Response at 19-20.

4 requires the utility dispose of economic long power (*i.e.*, sell excess resources).[24] It argues the Commission's assessment of compliance with SOC 4 "does not extend to analysis of PG&E's efforts to sell excess RA identified after conducting solicitations in accordance with Appendix S" and asserts Public Utilities Code Section 454.5(d)[25] (enacted following passage of Assembly Bill (AB) 57) eliminates an after-the-fact reasonableness review of PG&E's actions in compliance with its Bundled Procurement Plan.[26] PG&E stretches the effect of Section 454.5(d) and the Bundled Procurement Plan. Again, nothing in Resolution E-4998 suggests the Commission intended to eliminate a review of PG&E's efforts to sell excess RA identified after conducting solicitations in accordance with Appendix S. Moreover, Section 454.5(d)(2) expressly permits the Commission to "establish a regulatory process to verify and ensure that each contract was administered in accordance with the terms of the contract[.]"[27] That process is the ERRA Compliance process. In an ERRA Compliance proceeding, parties <u>*can*</u> contest whether PG&E followed SOC 4 and prudently managed its resources in making RA sales during the record year. In fact, because the question involves actions the IOU should have taken, but did not pursue (*i.e.*, a retrospective review of the IOU's actions during the record year), the only available forum for parties to probe that question is the ERRA Compliance Application and review process. Consequently, this ERRA Compliance proceeding is the only forum in which CalCCA can address the question of whether PG&E prudently managed its excess RA resources during the summer of 2022.

Again, the definition of "relevant evidence" is "manifestly broad" and evidence is relevant "no matter how weakly it tends to prove a disputed issue."[28] CalCCA's stricken testimony and the

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[24] *Id.* at 18.

[25] All subsequent code sections cited herein are references to the California Public Utilities Code unless otherwise specified.

[26] PG&E Response at 18.

[27] Cal. Pub. Util. Code § 454.5(d)(2).

[28] *People v. Tauber, 56 Cal. Rptr. 2d 656, 660 (4th Dist. Sept. 18, 1996).*

evidence it seeks to elicit through hearing easily meet that broad standard, and therefore, there is no risk of "expanding the scope of this proceeding" by reversing the Rulings as PG&E warns.[29] The Commission should reverse the Rulings.

3) The Commission Should Take Notice of the SDG&E Filings

CalCCA's Motion for Official Notice requested official notice of several documents filed in SDG&E's 2022 ERRA Compliance proceeding, including an ALJ's discovery ruling (SDG&E Filings).[30] In that Motion, CalCCA states: "the ALJ in SDG&E's 2022 ERRA Compliance *found* the information requested by the Joint CCAs relevant to the scope of the proceeding."[31] PG&E seizes on CalCCA's use of the word "found" and argues official notice of the SDG&E ALJ's discovery ruling would not be proper because "factual findings in a prior judicial opinion are not a proper subject of judicial notice."[32] PG&E ignores that the ALJ's discovery ruling reaches a legal conclusion regarding the relevance of the underlying discovery requests, not a factual finding. And even if that conclusion were a factual finding (and it is not), CalCCA does not seek notice of the truth of that conclusion, but rather seeks notice of the existence of the discovery ruling. In other words, CalCCA asks the Commission to take notice of the existence of a ruling that confronts a substantially similar question to the evidentiary question before the Commission here—whether information regarding the utility's attempts to sell excess RA during the summer of 2022 is relevant to the scope of an ERRA Compliance proceeding?—and reaches the opposite answer relative to the ALJ's evidentiary rulings here.[33] There is, therefore, nothing improper about

[29] PG&E Response at 20-21.
[30] *California Community Choice Association's Motion for Official Notice,* A.23-03-018 (Jan. 18, 2024) (CalCCA's Motion for Official Notice), at 1-2: https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M523/K791/523791678.PDF.
[31] *Id*. at 4 (emphasis added).
[32] PG&E Response at 22.
[33] CalCCA's Motion for Official Notice at 3.

CalCCA's Motion for Official Notice, and the Commission should reverse the ALJ's ruling denying that motion.

4) CalCCA's Motion for Commission Review Does Not Raise Any New Arguments

In its Motion for Commission Review, CalCCA explains PG&E's efforts to sell excess System RA bear directly on the PCIA rates that community choice aggregators pay.[34] CalCCA also explains the testimony of witness Brian Shuey is relevant to Scoping Issue 1, and therefore the ALJ's ruling granting PG&E's motion to strike that testimony was in error.[35]

PG&E asks the Commission to disregard each of these arguments because, according to PG&E, "new arguments may not be raised for the first time on appeal."[36] As a threshold matter, this case is not on appeal, and the appellate practice rule PG&E cites does not apply here. But even if that rule—or the principle it represents—applied here, CalCCA's Motion for Commission Review did not raise any new arguments. CalCCA explained the relationship between PG&E's RA activities and the PCIA rates customers pay on page 10 of its Motion to Admit.[37] It explained the relevance of its testimony to Scoping Issue 1 on pages 8-12 of its Motion to Admit.[38] The arguments in CalCCA's Motion for Commission Review should not come as a surprise to any party, including to PG&E.

II. CONCLUSION

For the reasons described in CalCCA's Motion for Commission Review and this Reply, CalCCA respectfully requests the Commission reverse the Rulings.

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[34] CalCCA's Motion for Commission Review at 2.
[35] *Id.* at 15-19.
[36] PG&E Response at 21.
[37] *California Community Choice Association's Motion to Offer Exhibits Into Evidence and Admit Into the Record*, A.23-02-018 (Jan. 18, 2024), at 10.
[38] *Id*. at 8-12.

Respectfully submitted,

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