BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of 2024-2031 Energy Efficiency Business Plan and 2024-2027 Portfolio Plan.	Application 22-02-005 (Filed February 15, 2022)
And Related Matters.	Application 22-03-003 Application 22-03-004 Application 22-03-005 Application 22-03-007 Application 22-03-008 Application 22-03-011 Application 22-03-012 (Consolidated)

REDWOOD COAST ENERGY AUTHORITY'S PETITON FOR MODIFICATION OF D.23-06-055

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In accordance with Rule 16.4 of the Rules of Practice and Procedure of the California Public Utilities Commission ("CPUC" or "Commission"), Redwood Coast Energy Authority ("RCEA"), on its own behalf and on behalf of the Rural Regional Energy Network ("RuralREN"), hereby submits the following Petition for Modification of Commission decision D.23-06-055 (the "PFM").

This PFM requests significant modifications to the D.23-06-055, which approved the RuralREN Formation Motion and Business Plan.[1] Since the issuance of D.23-06-055 there have been two extraordinary developments that have led RCEA to the unfortunate but inescapable conclusion that the RuralREN Program, as originally proposed, is no longer viable.

[1] The RuralREN Formation Motion and Business Plan were filed by RCEA in R.13-11-005 and subsequently transferred to the consolidated Energy Efficiency Portfolio Application proceeding, A.22-02-005 et al.

First, RCEA has been prevented from fully initiating RuralREN by a group of four implementing RuralREN Partners[2] and one non-implementing RuralREN Partner[3] (together the "Opposing Partners" or "OPs"), who wrongfully claim that RCEA is not the legitimate RuralREN Portfolio Administrator ("PA"). These Opposing Partners have taken bad faith actions that have impeded RCEA's ability to fulfill its duties as RuralREN PA.

Second, RCEA and the Opposing Partners are unable to reach agreement on a successor Memorandum of Understanding ("Successor MOU"), which is necessary for RuralREN to effectively implement its programs. At issue is the division of governing authority between the RuralREN Partners and PA. There is no apparent prospect of compromise in this dispute, as RCEA believes that the PA must have adequate authority to maintain reasonable financial and contracting controls and oversight and fulfill the responsibilities (and avoid the potential liabilities) that come with the PA role.

Together, these two developments prevent RCEA from fulfilling its duties as PA and have delayed the implementation of RuralREN's programs. In resolving these issues and returning RuralREN to viability, the paramount consideration must be the interests of the rural communities and ratepayers that RuralREN is intended to serve. RCEA's proposed modifications to D.23-06-055 will resolve RuralREN's current problems in a way that prioritizes rural ratepayers' interest in the deployment of RuralREN's programs without compromising the controls and oversight needed to protect ratepayers' EE dollars. In accordance with this principle, RCEA requests that the Commission approve the following modifications to D.23-06-055:

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[2] The Association of Monterey Bay Area Governments ("AMBAG"), the County of San Luis Obispo ("SLO"), the High Sierra Energy Foundation ("HSEF"), and the San Joaquin Valley Clean Energy Organization ("SJVCEO").

[3] The County of Ventura.

- Redefine RuralREN's service area to cover only the program areas currently served by RCEA and the Sierra Business Council (the North Coast region and the Northern Sierra region).
- Redefine RuralREN's programmatic commitments/offerings to consist of only those programs identified in the RuralREN Business Plan for implementation in the North Coast and Northern Sierra regions.
- Reduce RuralREN's budget to the amount needed for the redefined RuralREN to fulfill its program obligations in its redefined service area.
- The IOU funding allocations for RuralREN would be reduced to the amount identified in the redefined RuralREN's budget.
- Reaffirm RCEA as PA of the redefined RuralREN. Update RuralREN's membership to consist of the following Partners only: RCEA; Sierra Business Council ("SBC"); Lake Area Planning Council ("Lake APC"); and Mendocino County Association of Governments ("MCOG").
- Authorize RCEA to submit a revised RuralREN business plan for the redefined RuralREN via Tier 2 Advice Letter within 60 days of the Commission's approval of this PFM.

RCEA is providing its requested modifications to the D.23-06-055 Findings of Fact, Conclusions of Law, and Ordering Paragraphs needed to effectuate this proposal in Appendix A to this PFM.

I. JUSTIFICATION FOR REQUESTED RELIEF

RCEA's requested modifications to D.23-06-055 are necessary to address two significant changes of circumstances that are impeding RuralREN's start-up efforts and preventing RuralREN from operating as a functional Regional Energy Network ("REN") program.

a. <u>The Opposing Partners Wrongfully Dispute RCEA's Status as RuralREN PA and Have Engaged in Bad Faith Actions That Have Impeded RCEA's Efforts to Fulfill Its PA Duties.</u>

Beginning in September 2023 and continuing through the present, the OPs have wrongfully refused to recognize RCEA's status as RuralREN PA, and instead falsely claim that SLO is the rightful RuralREN PA. In furtherance of this claim, at least three of the OPs have engaged in intentional bad faith actions that have greatly impeded RCEA's ability to fulfill its duties as RuralREN PA.

Leading up to this dispute, RCEA had found itself in disagreements with some of the OPs over the plan for the RuralREN launch. RCEA's plan to deploy programs at a careful, conservative pace was opposed by some OPs who were pushing to receive program funding as quickly as possible and expend the maximum amount of 2024 budgeted funds in that year.[4] Some of the OPs further opposed RCEA over RCEA's insistence that RuralREN be operated with reasonable contracting and financial controls and oversight, and that RCEA, as PA, have the authority to implement such controls and oversight and fulfill its responsibilities as PA.[5]

At a meeting of the RuralREN leadership team[6] on September 12, 2023, the OPs presented grievances against RCEA in the form of a "bi-directional review" of RCEA's performance as PA.[7] This review was deeply flawed. It was prepared by a consultant who was not under contract with RuralREN and who had a significant financial relationship with SJVCEO, one of the most vocal opponents of RCEA's proposals. The primary grievance

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4 Attachment 1 (Declaration of Stephen Kullmann) at p. 1.

5 Id. at pp. 1-2.

6 The RuralREN leadership team is a committee composed of the leadership of each of the RuralREN partners. Prior to RuralREN's official CPUC approval as a REN, the leadership team was responsible for governing and managing RuralREN activities. After the approval of the RuralREN Formation Motion, this authority was transferred to the RuralREN PA, with the leadership team performing a primarily advisory role.

7 Attachment 2 (Bi-Directional Review).

expressed by the OPs in the bi-directional review was RCEA's negotiating position in discussions over a new Memorandum of Understanding to govern RuralREN, a matter entirely irrelevant to RCEA's performance of its duties as RuralREN PA.[8]

The OPs then held a vote on a surprise motion to remove RCEA from the PA role and transfer PA responsibility to SLO.[9] This motion had not been noticed and was not on the meeting agenda.[10] As such, RCEA had not prepared to discuss the motion and did not have counsel present to object to the vote. Five partners voted in favor of the motion, with the remaining two, RCEA and the Sierra Business Council ("SBC"), voting against it. The motion and subsequent vote were marred by numerous procedural flaws.[11] More importantly, the motion violated the terms of the Partners' July 30, 2021 Memorandum of Understanding (the "MOU"), the binding contract executed by all of the RuralREN Partners, including RCEA, setting forth the rules and processes for the development and governance of RuralREN.[12]

The vote to remove RCEA as PA was thus invalid, it neither removed RCEA as RuralREN PA nor replaced RCEA with SLO in the PA role. Both the "bi-directional review" and the motion were outside the leadership team's authority under the MOU,[13] and neither of two

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8 Id.

9 Attachment 3 (Meeting Minutes).

10 Attachment 4 (Meeting Agenda).

11 The motion was made immediately after the presentation of the bi-directional review, denying the RCEA Portfolio Administration staff and RCEA counsel an opportunity to respond to any of the OP's asserted concerns. The third party who conducted the "bi-directional review" did not interview RCEA staff about Portfolio Administration duties.

12 Attachment 5 (MOU).

13 The MOU creates distinct sets of responsibilities for the PA and Leadership Team for two defined periods: the "Development Phase," defined as the period leading up to the CPUC's approval of RuralREN's business plan and formation motion; and the "Implementation Phase," defined as the period after CPUC approval. During the Development Phase, the governance mechanism from Section 4 of the MOU applies, giving the Leadership Team the broad governing powers. However, the first paragraph of Section 4 makes clear that Section 4, and the powers granted therein, only applies during the Development Phase. This paragraph states that "this Section defines the governance structure for the Parties *during the Development Phase.*" During the Implementation Phase, Section 4 provides only a

necessary conditions needed to remove or replace RCEA as RuralREN PA have been met. First, RCEA and the other RuralREN Partners would have to amend Section 3 of the MOU, which states "RCEA will be the administrative lead for the RuralREN (hereinafter the 'Administrator')."[14] Under Section 10 of the MOU, such an amendment may only be made with the *unanimous* consent all RuralREN Partners, including RCEA.[15] Second, because D.23-06-055 approved RuralREN's Formation Motion with RCEA as RuralREN's PA, removing or replacing RCEA as PA would require the issuance of either a new Decision superseding D.23-06-055 or a Decision modifying D.23-06-055. *Neither of these conditions has been met. RCEA remains the RuralREN PA*.

Despite this, the OPs continue to falsely assert that SLO, not RCEA, is the rightful RuralREN PA. This disagreement remains ongoing and there is no prospect of resolution without CPUC action. On September 15, 2023, RCEA sent the RuralREN Partners a letter informing them that RCEA remained the RuralREN PA and requesting that they comply with the terms of the MOU.[16] In an attempt to resolve this conflict, the letter also invited the RuralREN Partners to a facilitated meeting to discuss their concerns and re-establish lines of communication.[17] RCEA repeated this invitation in writing on at least three separate occasions[18]

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nonbinding "*model framework* for RuralREN governance." During the Implementation Phase, the role and authority of the PA is greatly expanded to include the powers listed in Section 3, while the role and authority of the Leadership Team is limited to the two Leadership Team functions set forth in the MOU outside Section 4: reviewing and approving implementation phase budgets (Section 5) and adding new RuralREN partners (Section 7).

[14] In the MOU the terms "Administrative Lead" and "Administrator" are synonymous with "Program Administrator." This is evidenced by the Administrator's list of post-decision authorities in Section 3 and the fact that, pursuant to this Section, the RuralREN Formation Motion specifically identifies RCEA as the RuralREN PA.

[15] Section 10 states: "This MOU may be amended only by a written instrument executed by authorized representatives from all of the Parties in the same manner as this MOU."

[16] Attachment 6 (September 15, 2023 Clarification Letter from RCEA Counsel).

[17] Id. at p. 3.

[18] Attachment 7 (September 25, 2023, October 19, 2023, and November 3, 2023 Emails to the RuralREN Partners offering facilitated meeting).

and retained a neutral meeting facilitator.[19] These attempts to open a dialogue were first ignored by most OPs then refused by each of the OPs on November 8, 2023.[20]

Instead, on November 10, 2023, SJVCEO through counsel sent RCEA a letter reiterating the false claim that RCEA is no longer PA and demanding that RCEA transition the PA role to SLO.[21] Critically, this letter made no attempt to claim that Section 3 of the MOU had been amended, nor did it claim that the Commission had changed RCEA's PA status through a new or modified decision. This letter demonstrates the OPs' unwillingness to accept RCEA as PA and underscores the need for the CPUC to approve a fundamental restructuring of RuralREN to return RuralREN to viability.

Despite this unwillingness, RCEA has continued to fulfill obligations and responsibilities as PA in a transparent and good faith manner. RCEA secured a consultant well-versed in REN regulatory affairs to assist with completion of the True Up requirements and Joint Cooperation Memoranda ("JCM"). RCEA has been meeting regularly with CPUC Energy Division staff to clarify and inform regulatory work and to keep them apprised of the unfolding conflict with the OPs. RCEA has submitted the True Up requirements and Advice letter in a timely fashion. RCEA has organized and held ongoing JCM meetings with other PAs. Despite the ongoing conflict, RCEA has continued to include the OPs in the JCM meetings. RCEA, under the direction of CPUC Energy Division Staff, has worked with the three IOUs responsible for delivering RuralREN funds to negotiate contracts.

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19 Attachment 8 (Concur Contract).
20 Attachment 9 (November 8, 2023 emails from individual OPs refusing facilitated meeting).
21 Attachment 10 (November 10, 2023 Letter from SJVCEO counsel).

In furtherance of their false claim that RCEA is no longer the RuralREN PA, at least three of the OPs have engaged in additional bad faith actions that have obstructed RCEA's ability to fulfill its duties as PA. These bad faith actions are summarized as follows:

i. SLO Has Repeatedly Made False Assertions to Interested Parties that RCEA is not the RuralREN PA.

On September 15, 2023, SLO sent an email to Pacific Gas and Electric ("PG&E") falsely stating that "[m]oving forward the County of San Luis Obispo will act as Program Administrator and lead for RuralREN."[22] SLO did not copy RCEA on this email, nor did it inform RCEA of this communication. RCEA only found out about this email when PG&E included RCEA in an email response to SLO. RCEA subsequently confirmed that on the same date SLO sent identical emails to Southern California Edison ("SCE"), Southern California Gas ("SCG"), the California Energy Efficiency Coordinating Committee ("CAEECC") and the CPUC Energy Division.[23] RCEA was forced to respond to these emails to correct SLO's false claims.[24]

On November 20, 2023, Counsel for SLO sent out a second round of emails again falsely claiming that SLO was now the RuralREN PA and asking the recipients to cease all communications with RCEA. This time the emails were directed to PG&E, SCG, and SCE and stated, in relevant part:

> It is our understanding that you are continuing to communicate with Redwood Coast Energy Authority (RCEA) as if it was the Administrator. This is improper and we are requesting that all such communications must cease.
>
> We understand that RCEA has communicated to you its view that the Leadership Team's action was invalid and that it remains Administrator. RCEA's position is entirely unfounded. We are happy to share our legal analysis with you and to schedule a call if further discussion would be helpful.

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22 Attachment 11 (September 15, 2023 email from SLO to PG&E).
23 Attachment 1 (Declaration of Stephen Kullmann) at p. 2.
24 Attachment 12 (September 18, 2023 RCEA correction emails).

> All administrative matters relating to RuralREN, including contracting, the JCM and related matters must be directed to:
> Jordan Garbayo, jgarbayo@co.slo.ca.us and Trevor Keith, tkeith@co.slo.ca.us. [25]

RCEA was again forced to respond to SLO's emails to correct its misstatements.[26] SLO's emails damaged RCEA and RuralREN's reputation, wasted RCEA and RuralREN time and resources, and, critically, significantly destabilized RCEA's ongoing efforts to finalize RuralREN's funding contracts with the IOUs.[27]

Most troublingly, on December 15, 2023, shortly before RCEA filed this PFM, SLO submitted a filing in R.13-11-015 titled "Rural REN Notice of Change of Administrator." This "Notice" falsely states that "the role of the Administrator for the Rural Regional Energy Network (RuralREN) is now held by the County of San Luis Obispo" and that "[t]his change was implemented pursuant to the governance process provided for in the Energy Efficiency Portfolio Application of the Rural Regional Energy Network." In the "Notice," counsel for SLO falsely identifies himself as representing "San Luis Obispo County *on behalf of the RuralREN*." SLO made these false claims even though the MOU unambiguously states that RCEA is the RuralREN PA, and D.23-06-055 has not been modified to change the RuralREN PA.

ii. Refusal to Disclose Communications

On September 25, 2023, RCEA sent an email to the RuralREN Partners requesting that they disclose "all communications to any parties by any Leadership Team member regarding the RuralREN Program Administration or claiming to speak on RuralREN's behalf."[28] This request was made to correct confusion among the third-party stakeholders who were recipients of SLO's and other OP's incorrect and unjustified claims regarding RuralREN's PA, and was within the

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25 Attachment 13 (November 20, 2023 emails from SLO).
26 Attachment 14 (November 20, 2023 RCEA correction emails).
27 Attachment 1 (Declaration of Stephen Kullmann) at p. 2.
28 Attachment 7 (September 25, 2023 and October 19, 2023 e-mails)

scope of RCEA's authority as RuralREN PA.[29] Like all RENs, RuralREN is not a separate legal entity, but rather exists as a program of its PA (RCEA). RCEA is the legal entity ultimately responsible for RuralREN, and must, at a minimum, be aware of all communications made on RuralREN's behalf, especially when unauthorized. RCEA reiterated this request in emails to the OPs dated October 9 and October 19, 2023.[30] Only one RuralREN Partner responded to this first request.[31] To date the OPs have not provided RCEA with these critically important disclosures.

iii. SJVCEO Contracting

On November 14, 2023, PG&E informed RCEA that it had been contacted by a third-party energy efficiency program contractor, who had requested data for RuralREN counties. The contractor asserted that it was expanding its Workforce Education and Training ("WE&T") program area into the following counties in 2024: San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, Kern. The contractor asserted that these territories will be serviced under their CPUC-funded RuralREN contract. The contractor further stated that the implementing agency for the San Joaquin RuralREN Region is SJVCEO, and that they are working in partnership with SJVCEO to carry out implementable work in these specific communities. The contractor named two individuals with SJVCEO email addresses as the main points of contact.[32]

This news was troubling as, to date, RCEA has not issued a solicitation for WE&T services on behalf of RuralREN and has neither delegated nor authorized SJVCEO to negotiate or execute *any* contracts on behalf of RuralREN or to expend or commit RuralREN funds to

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29 Under MOU Section 3, RCEA's PA authorities include representing RuralREN at the CPUC, coordinating with the IOUs on behalf of RuralREN, and coordinating with other Portfolio Administrators.
30 Attachment 15: (October 9, 2023 e-mail requesting disclosures).
31 On October 10, 2023 SBC responded to the request informing RCEA that it did not have any communications to disclose.
32 Attachment 1 (Declaration of Stephen Kullmann) at p. 2.

contractors.[33] RCEA communicated these concerns to the RuralREN Leadership Team meeting on December 12, 2023. SLO claimed that no contracts or promises of contracts had been made, but SLO and all other Leadership Team members did not respond about the implementer's claim.[34]

Any solicitation by SJVCEO or attempt by SJVCEO to enter a contract on RuralREN's behalf or using RuralREN funds is invalid and a clear violation of the MOU. Section 3 of the MOU specifically confers upon RCEA authority over RuralREN contracting relevant to program implementation. Section 3 states that RCEA's duties include "[m]anaging the contracts between RuralREN and the Parties or consultants retained to implement the applicable RuralREN Program Implementation Plan." The MOU does not give individual RuralREN partners the authority to enter contracts without PA approval. Furthermore, because RuralREN is a program of RCEA, a local government agency, all RuralREN contracting must adhere to RCEA's local government agency procurement rules, *including open solicitation requirements*. The apparent contract or promise of a contract between the third-party vendor and SJVCEO does not appear to have been secured through an open solicitation in compliance with these requirements.[35] This action, as well as circumstances uncovered in RCEA's efforts to untangle the motives that led to this conflict, bring up serious concerns regarding SJCVEO's ability and willingness to adhere to proper procurement policies and rigorous oversight controls.

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[33] Id. at pp. 2-3.

[34] Id. at p. 3.

[35] SJVCEO had previously identified this same third-party implementer in the RuralREN budget during the Business Plan development despite being informed that selecting an implementer without a solicitation process would not be allowed. *See* Attachment 1 (Declaration of Stephen Kullmann) at p. 3.

iv. Demand for Amended Advice Letter

Pursuant to its PA obligations, on October 16, 2023, RCEA properly met RuralREN's True Up reporting requirement through the submission of RuralREN Advice Letter 001-E/001-G and the upload of associated data to the CPUC's California Energy Data and Reporting System ("CEDARS").

On November 3, 2023, AMBAG sent RCEA an email purportedly on behalf of the Leadership Team which requested that RCEA amend the Advice Letter in order "to correct a number of critical issues."[36] SJVCEO, through counsel, thereafter repeated the demand that RCEA file an amended Advice Letter, stating that SLO "will be submitting a revised advice letter."[37] RCEA responded in detail on November 11, 2023,[38] informing the OPs that the "errors" identified by AMBAG and SJVCEO were not actual errors and that an amendment was not appropriate.[39] At the December 4, 2023 leadership team meeting the OPs considered the following action item: "Authorize the County of San Luis Obispo to finalize the attached draft True Up Advice Letter (TUAL), and file it on behalf of the RuralREN." All of the OPs voted in favor of this item.[40]

AMBAG and SJVCEO's demands and the vote to amend the Advice Letter are inappropriate, violate the MOU, and impinge on RCEA's authority as the PA. Only RCEA, as RuralREN PA, has the authority to submit Advice Letters on RuralREN's behalf. Section 3 of

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36 Attachment 16 (November 3, 2023 AMBAG email demanding amended Advice Letter).

37 Attachment 10 (November 10, 2023 Letter from SJVCEO counsel) at p. 6.

38 Attachment 17 (November 11, 2023 RCEA email response to AMBAG).

39 RuralREN Advice Letter 001-E/G was prepared by RCEA staff and experienced consultants in close coordination with the Energy Division and CPUC reporting staff. The Advice Letter was not protested by any party. The specific substantive errors that the OPs claim to have found in the AL are not, in fact, errors, and are instead instances where RCEA followed specific guidance and instruction from the Energy Division. See Attachment 1 (Declaration of Stephen Kullmann).

40 Attachment 18 (Minutes from December 4, 2023 leadership team meeting).

the MOU specifically states that the PA's Implementation Phase duties include "filing regulatory submissions and reporting to the CPUC." Further, because RuralREN is a program of RCEA, the OPs may not submit a RuralREN advice letter without RCEA's approval.

b. <u>RCEA and the OPs are Deadlocked Over Terms of a New Memorandum of Understanding.</u>

RuralREN's current internal governance structure is established by the MOU, which was primarily designed to function as a temporary organizational agreement to define the RuralREN Partners' roles "[d]uring the development of the RuralREN proposal, business plan, and all activities and tasks leading to a [CPUC] funded RuralREN," or "the Development Phase".[41]

Section 9 of the MOU explicitly requires the RuralREN Partners to evaluate the need for a Successor MOU to redefine the Partners' relationship while implementing the energy programs after CPUC approval and funding of RuralREN (the "Implementation Phase").[42] The MOU contains a bridge governance structure for use if the CPUC were to approve RuralREN (thus bringing RuralREN into the Implementation Phase) without a Successor MOU in place. This bridge governance structure specifically defines the Implementation Phase roles and authorities of both the PA and the RuralREN Partners, as represented by the RuralREN leadership team.[43] However, this bridge structure is far from ideal and serves only as a temporary fix.

RCEA expected that the RuralREN Partners would have a Successor MOU in place prior to the CPUC issuance of a Decision on RuralREN's Formation Motion and did not anticipate

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41 Attachment 5 at Section 3 (MOU p. 4).

42 "Implementation Phase" is defined in Attachment 5 (MOU), Section 3.

43 The transfer of authority from the leadership team during the Development Phase to the PA during the Implementation Phase is accomplished by the introductory language of Section 4 of the MOU. This language states that the governance structure outlined in Section 4 is a "*model* framework for RuralREN governance" and that "in addition, this Section defines the governance structure for the Parties during the Development Phase." As a "model framework" the governance structure outlined in Section 4 is not RuralREN's *actual* governance structure outside the Development Phase. Instead, during the Implementation Phase the bridge governance structure set forth in Section 3 of the MOU applies.

that the MOU's "bridge" Implementation Phase government structure would go into effect. As such, in the RuralREN Formation Motion RCEA provided a description of RuralREN's then in-effect Development Phase governance structure only. For the same reasons, RCEA did not insist that a description of the bridge Implementation Phase governance structure be included in the Business Plan. In providing only a description of the Development Phase governance structure, RCEA acted under the understanding the governance structure sections of the Motion and Business Plan would be updated once a Successor MOU was adopted.[44]

RCEA and the OPs have reached a fundamental impasse and are not going to reach agreement on a Successor MOU. This impasse is further exacerbated by the OPs' ongoing refusal to recognize RCEA as RuralREN PA, and their refusal to recognize RCEA's PA authority under the MOU Implementation Phase governance structure.[45]

RCEA and the RuralREN Partners began informal discussions about the Successor MOU in June 2022, with formal negotiations and drafting started in March 2023. By early September 2023 these discussions had reached an impasse on a fundamental issue: the division of governance authority between the RuralREN PA and the partners. Leading up to the negotiations, RCEA had determined that the RuralREN PA role would require taking on significant responsibilities, risks, and potential exposure to liability. As PA, RCEA is ultimately responsible for delivering the programs and results promised in the RuralREN Business Plan, and for acting as a responsible steward of the ratepayer funds entrusted to RuralREN. RCEA would be the defendant in any litigation brought against RuralREN. RCEA is answerable to the Commission for any failures to deliver promised programs or misuse of RuralREN funds.

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44 Attachment 19 (Peffer Declaration).

45 See, generally, Attachment 6 (RCEA Letter); Attachment 10 (November 10, 2023 Letter from SJVCEO counsel).

As a public agency, the PA is subject to accountability and transparency requirements and standards for its expenditure and management of public dollars. For example, local public agencies are subject to open meetings laws (Government Code §§ 5495X et seq., the Ralph M. Brown Act), financial conflict of interest laws (Government Code §§ 87100 et seq, the Political Reform Act), prohibition against contractual self-dealing (Government Code §§ 1090 et seq.), and records disclosure requirements (Public Records Act, Government Code §§ 7920.000 et seq.). It would be unreasonable to apply a lower standard of care to ratepayer dollars entrusted to public agencies. It would be impossible for any local public agency to satisfy these standards without having the governance and operational oversight that RCEA sought to achieve in the Successor MOU.

Because all RENs are programs of local government agencies, all REN contracts, expenditures, and activities must comply with the relevant procurement requirements applicable to the local government PA. For instance, contracts with specified professionals must be procured in a manner to ensure the professional has demonstrated competence and professional qualifications (Government Code §§ 4525 et seq.), are subject to recordkeeping and audits, and must be consistent with the agency's procurement policies. To ensure that these requirements are met, the PA must have a reasonable degree of oversight over the methods by which REN funds are committed and expended. The primary way to ensure these requirements are met is to have the REN PA act as the contracting party for contracts between the REN's vendors and other counterparties, including the use of appropriate flow down requirements in subrecipient third party contracts. Robust oversight and controls are critically important to protect ratepayer money and ensure that public/ratepayer funds are allocated in a legal and transparent manner.

As such, RCEA concluded that the Successor MOU would need to include provisions that gave RCEA adequate control over RuralREN's governance, contracting, operations, and finances to fulfill all responsibilities and minimize its exposure to risk and liability. RCEA further concluded that this must include adequate authority to adopt and enforce reasonable controls and oversight over RuralREN finances and contracting to ensure compliance with legal requirements and best practices, including the financial, transparency, and contracting requirements applicable to RCEA as a local government agency.

In the Successor MOU negotiations RCEA proposed two reasonable provisions that were intended to ensure that RCEA had the authority to meet its obligations, protect RCEA from the risks and potential liability that comes with the PA role, and to adopt and ensure Partner compliance with reasonable financial, transparency, and contracting requirements, including those applicable to RCEA as a local government agency. First, RCEA proposed a provision that would give it the ability to veto or override decisions by the RuralREN Leadership Team if RCEA determined that the decision would violate legal or regulatory requirements, violate contractual obligations, or otherwise harm RCEA or RuralREN.[46] Second, RCEA proposed a

[46] Attachment 20 (July 20, 2023 RCEA Successor Memorandum Proposal) at p. 8, stating: "In the event that the Program Administrator determines that a Leadership Team decision: (i) does not comply with the CPUC Approval Decision or applicable regulatory authority; (ii) does not comply with third-party agreements entered into by the Program Administrator on behalf of the RuralREN, (iii) is contrary to state, local or internal requirements imposed on the Program Administrator; (iv) would unduly increase the risk of liability exposure to the Program Administrator; (v) would adversely impact the Program Administrator's reputation or goodwill; or (vi) would cause other significant harm to the Program Administrator or the RuralREN Programs; the Program Administrator shall have the authority to, at its discretion, override such decision or take action not approved by the Leadership Team as needed to avoid the harm or noncompliance. This override authority shall be recognized as an extraordinary remedy to avoid significant noncompliance in harm and shall not be used in the ordinary course of business. If an issue arises that may require the use of this authority, the Program Administrator will immediately inform the Leadership Team and, whenever possible, shall make a good faith effort to work with the Leadership Team to resolve the issue without the use of this authority."

provision that expressly recognized the fact that RuralREN is a program of RCEA and that any attorney-client or fiduciary duties owed to RuralREN would be owed to RCEA.[47]

These common-sense provisions were strongly opposed by the OPs. All five of the RuralREN Partners that provided negative reviews of RCEA in the "bi-directional review" identified the Successor MOU negotiations as motivation for their negative assessment of RCEA's performance as PA. For instance, one Partner stated:

> …the final version of MOU was a red light for me. That is when I clearly saw that the administrator sees themselves as the decision maker who has last say not an additional member of this group. This is when I understood what everyone has been frustrated about, for that language to come out at this time of the process did not leave me with a good feeling.[48]

RCEA was deeply confused by the OPs' opposition to its common-sense proposals. All RuralREN Partners are experienced energy efficiency program implementers. It's doubtful that the Partners are unaware of the fact that RENs are programs of a host agency (the PA), and it's equally unlikely that the Partners are unaware of the responsibility, risk, and liability borne by the PA. To the contrary, the Partners evidenced understanding of the role, responsibilities, and liability of PA in unanimously agreeing to the MOU's bridge governance structure for the Implementation Phase. Consistent with the responsibilities that come with the PA role, the Implementation Phase governance structure transitions management authority from the Leadership Team to the PA and limits the role of the Leadership Team to approving new RuralREN members and approving RuralREN budgets. The OPs' "bi-directional review" thus

[47] Attachment 20 (July 20, 2023 RCEA Successor Memorandum Proposal) at p. 9. Stating: "The Partners recognize that RuralREN is not a corporation or other formal legal entity, and as such RuralREN's attorneys and fiduciaries cannot have an independent attorney-client or fiduciary relationship with RuralREN separate from their relationship with the Program Administrator. The Partners agree that all duties associated with attorneys' legal and regulatory representation shall be owed exclusively to the RuralREN Program Administrator. The parties further agree that all fiduciary duties owed to RuralREN will be owed to the Program Administrator exclusively."

[48] Attachment 2 (Bi-Directional Review).

appears to have been a coordinated effort to develop a pretext for RCEA's removal rather than an honest accounting of the RCEA's performance as PA.

II. RELIEF REQUESTED

For the reasons discussed above, it has become clear to RCEA that its working relationship with the OPs is beyond salvage and that the RuralREN program, as described in the RuralREN Formation Motion and Business Plan, is no longer viable. This leaves RCEA with a limited set of options for resolving this situation. RCEA has carefully reviewed its potential options, and believes the best solution is a geographic, programmatic, and budgetary redefinition of RuralREN. Specifically, RCEA proposes that RuralREN be redefined as follows:

- The redefined RuralREN's service area would be reduced to cover only the program areas currently overseen by RCEA and the Sierra Business Council (the North Coast region and the Northern Sierra Region).
- RuralREN's programmatic commitments/offerings would consist of only those programs identified in the RuralREN Business Plan for implementation in the North Coast and Northern Sierra regions. All other RuralREN programmatic commitments would be excused.
- RuralREN's budget would be reduced to the amount needed for the redefined RuralREN to fulfill its program obligations in its redefined service area.
- RCEA would remain RuralREN PA, with SBC, Lake APC, and MCOG as partners.

RCEA requests that the Commission modify D.23-06-055 to effectuate this RuralREN redefinition proposal as the most just, reasonable, and efficient resolution to the current impasse available. In developing this proposal, RCEA thoroughly evaluated two alternative options, concluding that each is unreasonable:

- Alternative Option 1: Keep RuralREN's territorial boundaries and replace partners. Under this option RCEA would remain RuralREN PA, and would keep RuralREN's existing territory, funding, and program commitment while finding replacements for the current OPs to resolve the current conflict. While this option would have the benefit of preserving the existing RuralREN territorial boundaries and programs, finding replacement partners could be difficult and time-consuming, and this option would likely be aggressively opposed by the OPs.
- Alternative Option 2: SLO acts as PA for RuralREN. This alternative is not a viable option. Is not reasonable or consistent with ratepayers' interests for RCEA to surrender its PA status to SLO for several reasons.
    - First, this option would reward SLO and the OPs for their bad faith attempt to replace RCEA as RuralREN PA and related misconduct. This would be unjust and unreasonable and would set a dangerous precedent.
    - Second, because the MOU states that RCEA is the PA, this option would require that the Commission invalidate the MOU. The MOU is a binding contract voluntarily entered into by all RuralREN Partners. It is not clear that the Commission has the authority to unilaterally invalidate such a contract, and even if it does, invalidating the MOU without overwhelming reason to do so would be against the public interest.
    - Third, based on SLO and the OPs false statements and bad faith actions, coupled with the OP's strong opposition to any solution that gives the PA

the authority to impose reasonable financial and contracting controls on the other Partners, neither SLO nor the other OPs have demonstrated a willingness to prudently manage the RuralREN program and its $84 million in ratepayer funds.

- Fourth, having SLO, one of three members of 3C-REN, act as RuralREN PA would raise significant concerns about overlapping REN control and potential conflicts of interest.
- Fifth, SLO's interest in RuralREN is not particularly strong. SLO will be implementing only *one* RuralREN program,[49] in contrast to the *seven* 3C-REN programs implemented in SLO County.
- Sixth, SLO county does not share many of the needs and issues faced by other rural California communities. Compared to most of the RuralREN counties, SLO has greater population density, more high-income communities, a lower energy burden, significantly more developed infrastructure. SLO is also not geographically isolated from receiving services from other energy efficiency programs.[50] It is not consistent with the public interest for a REN established to meet the needs of rural ratepayers to be administered by a County that does not share many of these specific needs.

This newly defined RuralREN would have several significant advantages over the previous RuralREN model. The ratepayers in the newly defined RuralREN would benefit from

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[49] *See* RuralREN Business Plan at p. 48. Available at: https://www.caeecc.org/_files/ugd/849f65_17a237e746bd4caeb97319f12c02dc1b.pdf

[50] California Energy Commission Energy Equity Indicators, available at: https://caenergy.maps.arcgis.com/apps/MapJournal/index.html

program design and delivery more suited toward their unique rural characteristics. Because the North Coast and Northern Sierra regions are significantly more remote and the customer base is smaller and more distributed, it is much more difficult for IOU programs implemented by third parties and trade professionals to justify serving those ratepayers under existing cost effectiveness requirements. Both RCEA and SBC have operated Energy Watch programs in partnership with PG&E, and while the partnerships have been very successful, it has been a continual struggle to get services to the rural ratepayers in a timely fashion or at all. This struggle to deliver services to rural ratepayers was much of the justification for launching the RuralREN in the Northern regions, the remainder of RuralREN's regions have historically benefited from greater service offerings from both the existing RENs and IOUs. This is why it is so important for the Northern regions to operate the Residential and Commercial Resource Acquisition programs, programs that RuralREN was not going to offer in the other RuralREN regions.[51]

Finally, the Northern regions are home to a greater population of California and Federally recognized Native American Tribes and Tribal communities than the Southern region. RCEA and SBC are committed to partner directly with Tribal governments to design and deliver programs to meet their specific needs. RCEA has a long history of working closely with Tribal Governments and is unique in having two Tribal Governments serve on its Board of Directors: the Yurok Tribe, the largest Native American Tribe in California and a leader in natural resource restoration and protection, and the Blue Lake Rancheria, a recognized climate champion and advocate for innovative work in energy initiatives and workforce development. The RuralREN under RCEA's leadership will partner in meaningful ways with these Tribes and others, helping push the CPUC's goals of greater inclusion and equity forward.

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[51] *See* Attachment 1 (Declaration of Stephen Kullmann) at p. 4.

a. Proposed New RuralREN Borders

RCEA proposes that the Commission approve the geographic division of RuralREN between RuralREN's current northern and southern regions. The RuralREN Formation Motion identifies four RuralREN regions: North Coast, Sierra, San Joaquin Valley, and Central Coast.

FIGURE 1THE FOUR RURALREN REGIONS AS PRESENTED IN THE RURALREN BUSINESS PLAN

RuralREN's internal maps further divide the Sierra and Central Coast Regions into individual subregions, each assigned to a single RuralREN Partner. For the Sierra Region, Sierra Business Council is responsible for the Northern Sierra region, as defined in the bottom row of the following table:

Rural REN: Regions, Partners, Counties, Square Miles, Population

RuralREN Region	RuralREN Partner Organization	Counties Served	Land Area, Sq. Miles	Population
North Coast	Redwood Coast Energy Authority (RCEA)	Humboldt, Lake, Mendocino	8,331	296,227
Central Coast	Association of Monterey Bay Area Governments (AMBAG)	Monterey, San Benito, Santa Cruz	5,114	774,105
	County of San Luis Obispo (SLO)	San Luis Obispo	3,299	282,424
San Joaquin Valley	San Joaquin Valley Clean Energy Organization (SJVCEO)	Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, Tulare	27,262	4,313,060
Sierra	High Sierra Energy Foundation (HSEF)	Inyo, Mono	13,230	32,211
	Sierra Business Council (SBC)	Alpine, Amador, Butte, Calaveras, El Dorado, Lassen, Mariposa, Nevada, Placer, Plumas, Sierra, Sutter, Tuolumne, Yuba	21,013	1,306,482
		TOTAL:	**78,249**	**7,004,509**

TABLE 1: CURRENT RURALREN REGIONS.

RCEA asks that the Commission amend D.23-06-055 to redefine the RuralREN service area as consisting of the North Coast region and the Northern Sierra region. The new RuralREN service area is depicted in the following map.

FIGURE 2: THE NEW RURALREN REGION, SHOWN IN GREEN, CONSISTS OF THE COUNTIES SERVED BY THE SIERRA BUSINESS COUNCIL AND RCEA, AND IN PARTNERSHIP WITH LAKE AREA PLANNING COUNCIL AND MENDOCINO COUNTY ASSOCIATION OF GOVERNMENTS.

The redefined RuralREN would retain RCEA as the PA, with Lake County Area Planning Council ("LakeAPC"), Mendocino County Association of Governments ("MCOG"), and Sierra Business Council as partners. SBC has informed RCEA that while it is not taking a position on this PFM, it would not be opposed to the split or the redefined Northern RuralREN area if it were approved by the Commission.

As demonstrated in the following table, the redefined RuralREN would consist of four partners serving a population of 1.3 million and covering a land area of 29,245 square miles.

RuralREN Region	RuralREN Partner Organization	Counties Served	Land Area, Sq. Miles	Population
Humboldt	RCEA	Humboldt County	3,568	137,015
Lake	LakeAPC	Lake County	1,258	69,213
Mendocino	MCOG	Mendocino County	3,506	92,729
Nothern Sierra	SBC	Alpine, Amador, Butte, Calaveras, El Dorado, Lassen, Mariposa, Nevada, Placer, Plumas, Sierra, Sutter, Tuolumne, Yuba	21,013	1,306,482
		Total	29,345	1,605,439

TABLE 2: SUMMARY OF REDEFINED RURALREN SERVICE AREA AND POPULATION.

This newly defined RuralREN would have several significant advantages over the previous RuralREN model. The ratepayers in the newly defined RuralREN would benefit from a program design and delivery more suited toward their unique remote rural characteristics than those in the more populated southern regions of the existing RuralREN. The partners in the northern region are more aligned in the types of services they seek to offer through the RuralREN programs and will better be able to prevent any overlap with existing and proposed IOU programs. The Northern Regions have a greater population of California Indian Tribes and the newly defined RuralREN is better situated to build on its existing close working relationships to deliver programs to this population.

The new RuralREN would also benefit from the continuity of retaining RCEA as PA and RCEA's unique qualifications to serve as Portfolio Administrator of the RuralREN. For over 20 years, RCEA has served its remote rural region with energy efficiency programs, including as

PA for an Elect-To-Administer ratepayer-payer funded program. For over five years, RCEA has operated as a Community Choice Aggregator, delivering clean, affordable electricity to its customers. RCEA has been recognized throughout the state and country for its innovative programs and commitment to serving rural ratepayers.

The new RuralREN would operate as a robust and functional partnership. RCEA has close working relationships with the new RuralREN's partners, LakeAPC, MCOG, and SBC. SBC is a founding member of the RuralREN Leadership Team serving 14 rural counties in the Sierra region. Lake APC and MCOG are both public agencies representing their respective counties and incorporated cities. Lake APC and MCOG joined the RuralREN partnership prior to RCEA's motion to form the RuralREN to implement programs in their respective counties in partnership with RCEA with the understanding that the two agencies would become full members of the Leadership Team within the first year of implementation. Both LakeAPC and MCOG have current MOUs with RCEA. Therefore, they would be invited to become members of the Leadership Team of the newly defined RuralREN.

b. Disposition of other RuralREN regions

As part of the proposed redefinition, the RuralREN would relinquish all funding claims and program obligations for the San Joaquin Valley region, the Central Coast region, and the Southern Sierra subregion. RCEA is only requesting that RuralREN be released from its program commitments and funding claims for these areas and is not taking a position on what the Commission should do with these areas. Presumably the former RuralREN partners associated with these areas would be free to file one or more new REN formation motions or attempt to transition the programming plans for these areas to other RENs. If the Commission considers such motions from the OPs, it should take into account the violations of the RuralREN MOU, false statements, and bad faith actions described above.

c. Redefined RuralREN Budget

RCEA proposes that the RuralREN funding be reduced to the amount reasonably needed to implement RuralREN's program offerings for the North Coast and Northern Sierra regions. This budget is summarized in the following table and set forth in detail in the attached budget spreadsheet.[52]

Program	2024	2025	2026	2027	Total
Resource Acquisition	$2,039,119	$2,836,800	$3,698,356	$3,799,056	$12,373,331
Equity	$4,893,345	$5,031,517	$4,692,935	$4,960,310	$19,578,110
Codes and Standards	$797,665	$785,055	$820,622	$822,876	$3,226,220
EM&V	$322,088	$360,557	$383,829	$399,260	$1,465,735
Total	**$8,052,218**	**$9,013,931**	**$9,595,743**	**$9,981,503**	**$36,643,397**

TABLE 3: SUMMARY OF RURALREN FUNDING REQUEST

This budget amount was calculated by adding together RCEA's and SBC's self-identified administration, marketing and implementation ("AM&I") funding needs, which were done as part of a Business Plan budget exercise with all partners.[53] RCEA then additionally included CPUC and PA Evaluation, Measurement and Verification ("EM&V") budgets at standard amounts, calculated from the AM&I totals.[54]

52 Attachment 21 (Redefined RuralREN Budget Spreadsheet).
53 Attachment 2 (Declaration of Stephen Kullmann) at p. 4.
54 Id.

d. Updated Business Plan

This proposed redefinition of RuralREN will require updates to the RuralREN Business Plan. RCEA requests that in approving this PFM, the Commission adopt a new Ordering Paragraph instructing RCEA to submit an amended RuralREN Business Plan reflecting the approved territorial, membership, budget, and program changes via Tier 2 advice letter. RCEA recognizes the need to get past this impasse as quickly as possible to start delivering the promised EE programs to rural ratepayers. As such, RCEA proposes that the Commission set the deadline for the new business plan at 60 days after the issuance of the Decision approving the PFM.

III. CONCLUSION

RCEA thanks the Commission considering its request for modification of D.26-03-055 and respectfully asks that the Commission approve the modifications discussed herein and provided in Appendix A to this Petition.

Respectfully submitted,

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/s/ David Peffer

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APPENDIX A

PROPOSED MODIFICATIONS TO D.23-06-055 FINDINGS OF FACT AND CONCLUSIONS OF LAW

Proposed additions are provided in underlined text. Proposed deletions are provided in ~~strikethrough text~~.

PROPOSED FINDINGS OF FACT

Proposed New Finding of Fact 1:

> The RuralREN Program as proposed in the RuralREN Formation Motion and RuralREN Business Plan is no longer viable due to fundamental disagreements between RCEA (the RuralREN PA) and some RuralREN Partners over the role of the PA, the need for controls and oversight of RuralREN contracts and funding, and the terms of a Successor Memorandum of Understanding to govern RuralREN. RuralREN's viability has further been undermined by false statements and misconduct by some RuralREN Partners.

Proposed New Finding of Fact 2:

> Redefining RuralREN will benefit rural ratepayers by allowing the remaining RuralREN partners to move past the existing deadlock and start implementing important EE programs in some of the State's most vulnerable rural communities. This benefit will be enhanced by the close working relationship between the redefined RuralREN's partners, their relationship with the regions' Tribes, and their experience implementing energy efficiency programs.

PROPOSED CONCLUSIONS OF LAW

Proposed New Conclusion of Law 1:

> Both D.23-06-055 and the made RCEA the RuralREN PA, and as a matter of law RCEA will remain PA of the redefined RuralREN.

Proposed New Conclusion of Law 2:

> In light of both the breakdown of relations between the RuralREN PA and some RuralREN partners, as well as misconduct by a smaller subset of RuralREN partners, it is reasonable for the Commission to approve RCEA's proposal to

redefine RuralREN. This proposal is the most reasonable resolution to RuralREN's impasse.

Proposed New Conclusion of Law 3:

It is reasonable to redefine RuralREN's service area to include only the RuralREN North Coast region and the RuralREN Northern Sierra region.

Proposed New Conclusion of Law 4:

It is reasonable to redefine RuralREN's program commitments to include only those programs to be implemented in the RuralREN North Coast region and the RuralREN Northern Sierra region, and to release RuralREN from all other program commitments.

Proposed New Conclusion of Law 5:

It is reasonable to redefine RuralREN's budget and funding authorization as the amount needed to implement the redefined RuralREN programs in the redefined service area, calculated using RCEA and SBC's self-identified program funding requirements, and adding CPUC and PA Evaluation, Measurement and Verification ("EM&V") budgets at standard amounts, calculated from the AM&I totals.

Proposed new Conclusion of Law 6:

It is reasonable for the Commission to release the redefined RuralREN from all program obligations and funding claims for those parts of RuralREN outside the geographic boundaries of the newly defined RuralREN.

Proposed new Conclusion of Law 7:

It is reasonable for the Commission to release SCE and SCG from all RuralREN funding obligations, and reduce PG&E's RuralREN four-year funding allocation to $36,643,397.

ORDERING PARAGRAPHS

Proposed Revised Ordering Paragraph 8:

The proposal for a redefined Rural Regional Energy Network (R-REN) filed by the Redwood Coast Energy Authority in its December 14, 2023 Petition for Modification is approved and funded ~~as detailed in Tables 5 and 6 of this decision~~. R-REN shall submit ~~three separate~~ one joint cooperation memo~~s~~ (JCM~~s~~):

(a) A JCM with Pacific Gas and Electric Company (PG&E) (for the North Coast and Northern Sierra);

~~(b) A JCM with PG&E and Tri-County Regional Energy Network (for the Central Coast); and~~

~~(c) A JCM with PG&E, Southern California Edison Company, Southern California Gas Company, and Southern California Regional Energy Network (for the San Joaquin Valley and High Sierra).~~

Proposed New Ordering Paragraph 1:

From the effective date of this Decision, RuralREN will consist of RCEA, which will continue as RuralREN PA, along with Lake APC, MCOG, and SBC as partners. The new RuralREN service territory shall consist of the following counties: Humboldt, Lake, Mendocino, Alpine, Amador, Butte, Calaveras, El Dorado, Lassen, Mariposa, Nevada, Placer, Plumas, Sierra, Sutter, Tuolumne, and Yuba.

Proposed New Ordering Paragraph 2:

The redefined RuralREN will implement the programs identified in the original RuralREN business plan for the North Coast and Northern Sierra regions. RuralREN will be funded as set forth in Table 3 of RCEA's December 14, 2023 Petition for Modification. PG&E will be the sole IOU funding RuralREN.

Proposed New Ordering Paragraph 3:

Within 60 days of the approval of this Decision, RCEA shall submit a Tier 2 advice letter providing the Commission with an updated business plan for the redefined RuralREN, including a description of the redefined RuralREN's governance mechanism.