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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE

STATE OF CALIFORNIA

Order Instituting Rulemaking to Review, Revise, and Consider Alternatives to the Power Charge Indifference Adjustment	**Rulemaking 17-06-026** **(Filed June 29, 2017)**

APPLICATION FOR REHEARING OF DECISION 18-10-019 BY THE CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION AND THE DIRECT ACCESS CUSTOMER COALITION

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November 19, 2018

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This application for rehearing is filed pursuant to Rule 16.1 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure; it is being filed within 30 days after October 19, 2018, the date the Commission mailed Decision 18-10-019 and thus is timely filed by the California Large Energy Consumers Association (CLECA)[1] and the Direct Access Customer Coalition (DACC).[2] Pursuant to Rule 1.8(d), DACC has authorized CLECA's counsel to tender this document for filing on their behalf.

[1] CLECA is an organization of large industrial electric customers of Pacific Gas & Electric Company (PG&E) and Southern California Edison Company (SCE); the member companies are in the steel, cement, industrial gas, mining, pipeline, cold storage, and beverage industries and share the fact that electricity costs comprise a significant portion of their costs of production. Some members are bundled customers, others are Direct Access (DA) customers, and some are served by Community Choice Aggregators (CCAs); a few members have onsite generation. CLECA has been active in Commission proceedings since the early-to-mid 1980s and strives for even-handed treatment of all customers.

[2] DACC is a regulatory advocacy group comprised of educational, governmental, commercial and industrial customers that utilize direct access for all or a portion of their electrical energy requirements. In the aggregate, DACC member companies represent over 1,900 MW of demand that is met by both direct access and bundled utility service and about 11,500 GWH of statewide annual usage.

I. INTRODUCTION

Decision 18-10-019 lawfully orders rational and supported reforms to the Power Charge Indifference Adjustment mechanism with its revisions to the benchmarks, institution of a true-up process, and directing a new phase on portfolio optimization and cost reduction. However, two aspects of the Decision are unlawful and erroneous, and warrant expedited rehearing and correction: (1) the revision of the revenue allocation factors for departing customers; and (2) the establishment of forecast kWh sales and costs for each vintaged portfolio.

The utilities must work with the Energy Division and the parties on a very compressed timeline to comply, by January 1, 2019, with Ordering Paragraph 4 on generation revenue allocation factors and Ordering Paragraph 7 on subaccounts for each vintaged portfolio. Ordering Paragraph 4 states:

> Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall modify the revenue allocation factors for vintaged Indifference Amounts to be consistent with the factors used to allocate generation costs to their bundled service customers.[3]

Ordering Paragraph 7 states:

> Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall each file a Tier 2 Advice Letter within 60 days to establish a Portfolio Allocation Balancing Account (PABA) with subaccounts for each vintaged portfolio to account for billed revenues, generation resource costs, net California Independent System Operator market revenues associated with energy and ancillary services, and revenues associated with the renewable energy Adder and the Resource Adequacy capacity in each vintaged portfolio.[4]

[3] D. 18-10-019, at 160.
[4] D. 18-10-019, at 161.

The paucity of record evidence in this proceeding on the methodologies underlying these proposals has not combined well with the accelerated timeline for compliance; adding a layer of complexity, the compliance is occurring in the utilities' respective 2019 Forecast Energy Resource Recovery Accounts (ERRA) proceedings, rather than in a consolidated proceeding where consistency could be achieved.[5] As was clear at the November 8, 2018 PCIA Template workshop in those proceedings and subsequent responses to the utilities' respective November Updates,[6] there is great deal of confusion and concern and a significant risk of unintended consequences.

In ordering these particular reforms to occur by January 1, 2019, with a deficient record on the underlying methodologies and rate design calculations, D. 18-10-019 is arbitrary and capricious and erroneous and should be expeditiously corrected. We are not arguing that the contemplated reforms are unlawful *per se* or erroneous *in concept*; rather, the lack of a record on *methodology* and *how* the reforms are to be implemented renders their adoption by D. 18-10-019 unlawful and erroneous. For ratemaking to be just and reasonable, record evidence must support how allocation and rate design will actually occur, with specific findings of fact and conclusions of law that enable a reviewing court to assess and determine the lawfulness of Commission orders.[7]

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[5] *See* D. 18-10-019, at 161 (OP 8); these are A. 18-05-003 (SCE), A. 18-06-001 (PG&E), and A. 18-04-004 (SDG&E).

[6] *See, e.g.*, Comments of the Direct Access Customer Coalition, dated Nov. 15, 2018, in A. 18-05-003.

[7] The Utility Reform Network v. Public Utilities Com., 82 Cal. Rptr. 3d 791, 801, 166 Cal. App. 4th 522, 2008 Cal. App. LEXIS 1376 ("under the standards set forth in section 1757, subdivision (a), we are to determine whether the PUC acted contrary to a statute or to the California or federal Constitution, in excess of its jurisdiction, as a result of fraud, or in abuse of its discretion. We

Here, however, there is simply an insufficient record for that purpose. In fact, there could not have been a sufficient record as the nascent methodologies were not developed in this proceeding; they are only now being developed in the ERRAs.[8]

II. GROUNDS ON WHICH THE DECISION IS UNLAWFUL AND ERRONEOUS

Courts of appeal review Commission decisions using the substantial evidence standard; this means that findings of fact are not vulnerable to attack for insufficiency if they are supported by a reasonable construction of the evidence.[9] If, however, based on the evidence, a reasonable person could not reach the same conclusion, the Commission's findings are reversible.[10]

A. D. 18-10-019 Fails to Support Its Findings, Fails to Make the Necessary Findings to Support Its Conclusions and Is Arbitrary and Capricious

1. Substantial Record Evidence Demonstrates the Lack of Consistency in the Joint Utilities' Proposal and There Is No Finding that the Joint Utilities' Proposal Uses Consistent Allocators and No Finding on the Vintaging Portfolio Billing Determinants

Here, a reasonable person could not look at the record evidence on revenue allocation factors and support a determination that the initial Joint Utilities' proposal contains reasonably consistent allocation factors, because as a factual matter, they do

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also are to determine whether findings support the PUC's decision and, in turn, whether substantial evidence in light of the whole record supports those findings.").

[8] *C.f.* In R.17-06-026, Ex. IOU-1at 4-65, line 9 to 4-66, lines 1-13 contain a sum total of four sentences on vintaging portfolio billing determinants. By comparison, with SCE's Updated Testimony, dated November 7, 2018, in A. 18-05-003, there are two full pages of dense, detailed testimony for one utility, not to mention supporting workpapers.

[9] *Clean Energy Fuels Corp. v. Calif. Pub. Util. Comm'n*, (App. 4 Dist. 2014) 174 Cal.Rptr. 3d 297, 227 Cal.App.4th 641.

[10] *Pacific Gas & Electric Co. v. Pub. Util. Comm'n* (App. Dist. 2015) 188 Cal.Rptr. 3d 374, 273 Cal.App.4th 812.

not.[11] The Decision is erroneous because it fails to find as fact that adoption of the Joint Utilities' proposal would result in consistency, indeed it could not find this as a fact as the three utilities proposed different methodologies.[12] This contravenes the statutory directive for decisions to be supported by findings.[13]

Moreover, the Decision is unlawful because the substantial evidence in light of the record as a whole does not support the adoption of the Joint Utilities' proposal.[14] This contravenes the statutory directive for findings to be supported by substantial evidence in light of the whole record.[15] Adopting the proposal does not support the outcome (a desired consistency in allocation factors) intended by D. 18-10-019. Further, there is no evidence at all in the record on *how* the vintage portfolio billing determinants would be calculated, and consequently no finding on that issue.[16] This contravenes the statutory directive for decisions to be supported by findings.[17] On these aspects, D. 18-10-019's findings and conclusions are insufficiently supported by

[11] *See* Vol. 3 Tr. 548 (CLECA/Barkovich); *see also* Ex. CLECA-1, at 24.
[12] D. 18-10-019, at 153-156 (making no finding of fact that the Joint Utilities' proposal uses consistent allocators).
[13] Pub. Util. Code §1757(a)(3)(" The decision of the commission is not supported by the findings).
[14] *C.f*. Vol. 3 Tr. 548 (CLECA/Barkovich, Ex. CLECA-1, at 24-26, Ex. CLECA-2, and Ex. IOU-CLECA-1, at 3, with the limited testimony in Ex. IOU-1, at 4-63 line 17 to 4-65, line 7.
[15] Pub.Util.Code §1701.1(e)(18); *see also* Pub. Util. Code §1757(a)(4)("The findings in the decision of the commission are not supported by substantial evidence in light of the whole record").
[16] D. 18-10-019, at 153-156 (making no finding of fact on the calculation of vintage portfolio billing determinants).
[17] Pub.Util.Code §1705 ("the decision shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision"); *see also* Pub. Util. Code §1757(a)(3).

the record or nonexistent and D. 18-10-019 is thus arbitrary and capricious legal error and an abuse of discretion.[18]

i. Substantial Evidence In Light of the Record As a Whole Proves Inconsistency

The Decision concludes as a matter of law that "[t]he revenue allocation factors for vintaged Indifference Amounts should be consistent with the factors used to allocate generation costs to their bundled service customers."[19] Record evidence, however, demonstrates inconsistencies: PG&E proposed the use of a system-level generation allocator for departing customers. SCE and SDG&E did not, as they each proposed different allocators for departing customers.[20] CLECA testimony explained in detail:

> the methodologies are not going to be consistent among the utilities. PG&E will use system-level generation allocators, SCE will use a mixture of bundled and system-level factors [so a different allocator for bundled customers from the allocator for departing customers], and SDG&E will use bundled factors for both.[21]

As Dr. Barkovich testified from the stand, SCE proposes "still to use two different allocators for bundled and nonbundled customers …So they're different. So that is problematic to me because if the goal is to make them the same, that didn't achieve that."[22] CLECA and DACC do not necessarily oppose in principle use of a consistent allocation factor.[23] However, the proposed allocators are not consistent.

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[18] Pub. Util. Code §1757(a)(5)("The order or decision of the commission was procured by fraud or was an abuse of discretion").
[19] D. 18-10-019, at 157, COL 15.
[20] Id.
[21] Ex. CLECA-1, at 25; *see also* Ex. CLECA-2 (SCE data response on the different allocators).
[22] Vol. 3 Tr. 548 (CLECA/Barkovich).
[23] D. 18-10-019, at 123.

Notably, allocation issues impact all customer classes, and changes in allocation factors shift costs among departing customer classes; it "increase[s] rates for groups of departing non-residential customers" because it will "reduce rates for departing residential customers."[24] Public Utilities Code §1711 took effect January 1, 2017,[25] prior to the September 25, 2017 issuance of the Scoping Memo and Ruling of Assigned Commissioner;[26] the statute directs,

> [w]here feasible and appropriate, … before determining the scope of the proceeding, the commission shall seek the participation of those who are likely to be affected … The commission shall demonstrate its efforts to comply with this section in the text of the initial scoping memo of the proceeding.[27]

The Commission's outreach was limited to sending a press release to "a number of local government groups and asking those groups to distribute the information to their members."[28] It is not clear whether any notice reached all customer classes that revenue allocation and rate design may be significantly changed in this proceeding. CLECA's concern that such impacted parties may not have had notice of this cost shift among departing customer classes is also on the record.[29] CLECA and the Joint Utilities

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[24] Ex. CLECA-1, at 24.
[25] Pub.Util.Code §1711(a).
[26] Scoping Memo and Ruling of Assigned Commissioner (Scoping Memo), Issued September 25, 2017, in R. 17-06-026
[27] Pub.Util.Code §1711(a).
[28] Scoping Memo, at 29.
[29] Ex. CLECA-1, at 25 ("The use of the system allocator [as proposed by PG&E] actually substantially decreases the allocation to the residential class and significantly increases the allocation to all other classes except GS-2 and Standby. This is not a trivial change and is being proposed in this rulemaking, rather than in a general rate case phase 2 where cost allocation changes are generally made. While I understand the concern that these costs be allocated in a similar way to customers regardless of their LSE [load-serving entity], the fact that ***these increases are buried in three pages of a 363-page document for one utility and <u>not even presented for the other two</u> is at least disturbing***. Many of these groups of customers are not

subsequently stipulated that revenue allocation and rate design are typically addressed in general rate cases.[30] CLECA recommended deferral of this issue to those cases, but this recommendation was rejected because of timing concerns, the risk that the outcome there might not be "as reasonable", and the need for the change to apply to all three utilities.[31] Now, however, customer classes who were not involved here could be significantly impacted by the ill-supported rate design changes ordered in this decision; for example, the PCIA for vintage 2018 for street lights under PG&E's latest ERRA Update proposal would increase from $0.00665 to $0.02667.[32] Contrary to Guiding Principle 1.b. on "reasonably predictable outcomes that promote certainty and stability for all customers within a reasonable planning horizon",[33] this is not a "reasonably predictable outcome."

The substantial evidence in light of the record as a whole does not support adoption of the joint proposal with an implementation of date of January 1, 2019. The record shows that the Joint Utilities made their initial proposal with almost no

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represented in this proceeding and are probably unaware of the possible impact on their future rates.")(emphasis added); *see also* Vol. 3 Tr. 547 (CLECA/Barkovich)(referring to the parties not involved in this case that "probably don't even know that there's a proposed change in allocators which is going to benefit residential customers and result in an increase for nonresidential customers"); *see also* Ex. CLECA-1, at 25 (noting that "the figures presented in the testimony are not what will actually happen for PG&E when this proceeding is decided" and that the "other utilities did not even present the impacts of this proposal for their customers, as they should have.").

[30] Ex. IOU-CLECA-1, at 3; *see also* Ex. CLECA-1, at 24-26.

[31] D. 18-10-019, at 123-124.

[32] *See* PG&E Workpapers for November ERRA Update, dated Nov. 7, 2018, in A.18-06-001.

[33] Scoping Memo, at 14.

supporting data, and what little data they had was incomplete and inapposite.[34] Record evidence, including CLECA's testimony, both prepared and in the hearing room under cross examination, and the data responses entered into the record, of the flaws in the proposal are substantial. Further, CLECA and the Joint Utilities entered a stipulation into the record calling attention to some of these issues and recommending deferral to general rate cases.[35] Multiple parties – including the utilities who initially made the proposal - agreed that this issue should be deferred.[36] The decision to revise the revenue allocation factors by January 1, 2019, using the Joint Utilities' proposal is not supported by substantial evidence in light of the record as a whole. On this basis, D. 18-10-019 should be re-heard.

ii. **No Findings on Consistency or Vintaging Portfolio Billing Determinants**

D. 18-10-019 makes no finding that the Joint Utilities' proposed revenue allocators are actually consistent (indeed, it could not).[37] Nor does it make any finding on the new proposal for vintaging portfolio billing determinants.[38] While the paucity of evidence supporting adoption of the revenue allocation change is stark, there is even

[34] Ex. CLECA-1, at 25 (noting there was only data for one utility, PG&E, and that "In response to a CLECA data request, PG&E stated that there is actually a mismatch between the allocation factors in table 4-3 … and the PCIA rates presented in table 4-4."); *see also* Vol. 3 Tr. 546-549 (CLECA/Barkovich) .
[35] Ex. IOU-CLECA-1.
[36] Ex. CLECA-1, at 24-26; *see also* Ex. IOU-CLECA-1; *see also* Opening Brief of Commercial Energy of California, at 37; *see also* Opening Comments of the Alliance for Retail Energy Markets and Direct Access Customer Coalition on the Proposed Decision of Administrative Law Judge Roscow on Power Charge Indifference Adjustment Reforms, at 14.
[37] D. 18-10-019, at 153-156.
[38] D. 18-10-019, at 153-156.

less evidence in R. 17-06-026 on the establishment of forecast kWh sales and costs for each vintaged portfolio. This is not a simple undertaking, yet the relevant Joint Utility testimony in R. 17-06-026 is all of four sentences:

> Once the PMM and GAM vintage subaccount revenue requirements have been allocated to rate groups, the Joint Utilities propose to divide the rate group-level revenue requirements by the forecast rate group-level sales of those responsible for that vintaged portfolio to determine the applicable new CTC, GAM and PMM rates. Under the Current Methodology, the CTC and PCIA rate group-level revenue requirements are divided by the forecast rate group-level sales of all system customers. Continuing to use forecast system level kWh sales in the denominator used to set rates, as opposed to forecast kWh sales of those responsible for each vintaged portfolio, will result in lower rates than are necessary to collect the revenue requirements. This would perpetuate a systematic undercollection bias in the balancing accounts because the rates are only applied to, and the revenues are only being collected from, those customers responsible for each vintaged portfolios.[39]

The utilities' various methodologies for developing forecast kWh sales and costs for each vintaged portfolio (we note that three different approaches have been proposed in the ERRAs) – not to mention the potential impacts of these divergent proposals - were unknown in this proceeding. There are no findings in D. 18-10-019 on this issue. Thus, there was not sufficient record evidence in this proceeding on the PCIA rates resulting from both the change in revenue allocation factors and the calculation of vintaged portfolio billing determinants to support their adoption and ordered implementation by January 1, 2019.

[39] Ex. IOU-1, at 4-65 to 4-66 (the single sentence footnote is irrelevant).

2. D. 18-10-019 Is Arbitrary and Capricious and An Abuse of Discretion

D. 18-10-019's findings and conclusions are insufficiently supported by the record or nonexistent; D. 18-10-019 is therefore arbitrary and capricious legal error and an abuse of discretion. Courts will overturn Commission decisions where they are insufficiently supported by the record. In *The Utility Reform Network v. Public Utilities Com.*, 167 Cal. Rptr. 3d 747, 223 Cal. App. 4th 945, 2014 Cal. App. LEXIS 119, 2014 WL 526411, the appeals court explains,

> We must consider all relevant evidence in the record, but it is for the Commission to weigh the preponderance of conflicting evidence. "*The 'in light of the whole record' language means that the court reviewing the agency's decision cannot just isolate the evidence supporting the findings and call it a day, thereby disregarding other relevant evidence in the record. Rather, the court must consider all relevant evidence, including evidence detracting from the decision, a task which involves some weighing to fairly estimate the worth of the evidence*."[40]

As detailed above, the relevant record evidence opposing the proposed change in generation allocators and showing its inconsistencies here overwhelms the record evidence supporting it. Moreover, as is also detailed above, there are no findings of fact on the consistency of the proposed allocators, nor on the development of vintaged portfolio billing determinants.

Further, on questions of rate design and allocation among utility customers, the California Supreme Court has annulled Commission decisions where "neither findings nor evidence exists" sufficient to support the asserted commission justification. In

[40] *The Utility Reform Network v. Public Utilities Com.*, 167 Cal. Rptr. 3d 747, 759, 223 Cal. App. 4th 945, 959, 2014 Cal. App. LEXIS 119, 2014 WL 526411 (emphasis added).

California Manufacturers Assn. v. Public Utilities Commission, 155 Cal.Rptr. 664, 668, 24 Cal. 3d 251, 595 P.2d 98, 1979 Cal. LEXIS 256, the California Supreme Court explained,

> Findings are essential to "afford a [****11] rational basis for judicial review and assist the reviewing court to ascertain the principles relied upon by the commission and to determine whether it acted arbitrarily, as well as assist parties to know why the case [**102] **[***668]** was lost and to prepare for [*259] rehearing or review, assist others planning activities involving similar questions, and serve to help the commission avoid careless or arbitrary action."[41]

There, the Court was reviewing the Commission's changes to revenue allocation and rate design that were supposed to incent conservation; it held:

> The findings on the material issues are insufficient to justify the rate spread adopted. While [****12] the commission's asserted justification for changing its method of spreading rate increase is conservation of natural gas resources, neither finding nor evidence exists showing the method adopted will result in conserving more natural gas than would other proposed methods.[42]

In *California Manufacturers Assn. v. Public Utilities Commission*, the California Supreme Court concluded rightly that "The decisions must be annulled for lack of sufficient findings."[43] Here, the one finding related to the change in revenue allocation is insufficient[44], and there are no findings on whether or not the proposed changes are

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[41] *California Manufacturers Assn. v. Public Utilities Commission*, 155 Cal. Rptr. 664, 667-668, 24 Cal. 3d 251, 595 P.2d 98, 1979 Cal. LEXIS 256 (internal citations omitted); *see also California Manufacturers Assn. v. Public Utilities Commission*, 155 Cal. Rptr. 670, 24 Cal. 3d 263, 595 P.2d 104, 1979 Cal. LEXIS 257.

[42] *California Manufacturers Assn. v. Public Utilities Commission*, 155 Cal. Rptr. 664, 667-668, 24 Cal. 3d 251, 595 P.2d 98, 1979 Cal. LEXIS 256 (internal citations omitted); *see also California Manufacturers Assn. v. Public Utilities Commission*, 155 Cal. Rptr. 670, 24 Cal. 3d 263, 595 P.2d 104, 1979 Cal. LEXIS 257.

[43] *California Manufacturers Assn. v. Public Utilities Commission*, 155 Cal. Rptr. 664, 668, 24 Cal. 3d 251, 595 P.2d 98, 1979 Cal. LEXIS 256 (internal citations omitted); *see also California Manufacturers Assn. v. Public Utilities Commission*, 155 Cal. Rptr. 670, 24 Cal. 3d 263, 595 P.2d 104, 1979 Cal. LEXIS 257.

[44] D. 18-10-019, at 154 (FoF 14 stating the current allocation factors are inconsistent).

consistent or on the proposed vintaged portfolio billing determinants.[45] The ordered allocation change and rate design are not supported by the necessary record evidence, were not proven on the record to achieve the desired result, and, simply put, require more work.

B. The Decision Should Be Reheard Quickly to Correct These Errors and Order Expedited Filing of Rate Design Window Applications by the Investor Owned Utilities *Or* Delay the Compliance Date for Implementation of the Revised Revenue Allocation Factors and Vintaging of Each Portfolio to be Addressed in a Subsequent Phase 2 in the 2019 ERRA Forecast Proceedings

D. 18-10-019 should be re-heard. Upon re-hearing, it should be revised to order simultaneous rate design window applications to consider reformation of the revenue allocation factors to make them consistent between departing and bundled customers and methodologies for forecasting kWh sales and costs for each vintaged portfolio. The Commission should consolidate the applications, so that the appropriate allocator is determined for all three utilities, a consistent result achieved and the critical nuances of the various, differing forecasting methodologies can be explored by all affected parties. D. 18-10-019 declined to implement the revenue allocation factor reform in General Rate Case Phase 2 proceedings because of timing, the perceived risk of a black box settlement opaque to the Commission, and the proceedings are "utility specific."[46] Yet the implementation is currently occurring in utility-specific ERRAs where the timing is problematic, the methodologies vary and are confusing to the impacted parties.

[45] D. 18-10-019, at 153-156.
[46] D. 18-10-019, at 123.

Furthermore, the ERRAs are necessarily utility-specific, and in fact, each utility is proposing different approaches.[47]

The current implementation is too rushed, contains errors, is creating confusion and concern, and may lead to unintended consequences. All of these issues are directly due to the lack of sufficient evidence and exploration of that evidence and the testing of various proposed methodologies; these issues can all be addressed if the parties are given the opportunity to do so in consolidated rate design window applications.

Alternatively, the Commission could revise the directive on timing of compliance; eliminating the need to implement these specific reforms by January 1, 2019 would allow for the necessary additional time in the 2019 ERRA Forecast proceedings. Parties need more time to develop and test the various methodologies for the revision to the revenue allocation factors and the establishment of forecast kWh sales and costs for each vintaged portfolio; adequate time is also required to create the necessary record supporting adoption and use of consistent methodologies.

III. CONCLUSION

CLECA and DACC respectfully ask for the Commission's timely consideration and granting of this Application for Rehearing of D. 18-10-019 to enable expeditious correction of the legal errors identified above.

[47] *See, e.g.*, Comments of the Direct Access Customer Coalition, dated Nov. 15, 2018, in A. 18-05-003.

Respectfully submitted,

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