



**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

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**Agenda ID #22549**  
**Quasi-Legislative**

TO PARTIES OF RECORD IN RULEMAKING 18-12-006:

This is the proposed decision of Commissioner Alice Reynolds. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's May 30, 2024 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ MICHELLE COOKE

Michelle Cooke

Chief Administrative Law Judge

MLC:smt

Attachment

Decision PROPOSED DECISION OF COMMISSIONER ALICE REYNOLDS  
(Mailed 4/26/2024)

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

Order Instituting Rulemaking to  
Continue the Development of Rates  
and Infrastructure for Vehicle  
Electrification.

Rulemaking 18-12-006

**DECISION DENYING CALIFORNIA LARGE ENERGY CONSUMER  
ASSOCIATION, ENERGY PRODUCERS AND USERS COALITION  
PETITION FOR MODIFICATION OF DECISION 22-11-040**

**Summary**

This decision denies the Petition for Modification (Petition) of Decision (D.) 22-11-040 filed by the California Large Energy Consumers Association and Energy Producers and Users Coalition (collectively, Joint Petitioners). For the reasons set forth below, we deny the Joint Petitioner’s Petition.

This proceeding is closed.

**1. Background**

On November 17, 2023, the Joint Petitioners filed a Petition to modify Decision (D.) 22-11-040. In D.22-11-040, the Commission adopted long-term transportation electrification funding for transportation electrification investment by the investor-owned utilities (IOUs). The transportation electrification funding (TEF) includes a rebate program primarily focused on behind-the-meter transportation electrification charging infrastructure funded by ratepayers. D.22-11-040 holds that the IOUs shall recover transportation electrification

program costs through distribution rates allocated on an equal cents per kilowatt hour basis applied equally to all customer classes.<sup>1</sup>

### **1.1. Summary of Petition**

The Joint Petitioners seek to modify D.22-11-040 to authorize the IOUs to allocate costs via a system average percentage change (SAPC), which will increase rates by different amounts for each customer class.<sup>2</sup> The requested modification would change D.22-11-040's current holding, which allows the IOUs to record all behind-the-meter transportation program costs, and recover them through distribution rates on an equal cents per kilowatt hour basis.<sup>3</sup> The Joint Petitioners argue that the SAPC preserves price signals by allocating transportation electrification costs through the application of the same average percent change to each customer class, which encourages customer behavior to more closely align with the state's reliability and decarbonization goals.<sup>4</sup> The Joint Petitioners rely on information from decisions issued subsequent to D.22-11-040, including D.23-04-040, which recently updated the Electric Rate Design Principles (ERDPs).

### **1.2. Response to Petition**

On December 18, 2023, parties filed responses to the Petition. First, The Utility Reform Network (TURN) opposed the Petition, arguing that the Joint Petitioners have not provided any new evidence that shows the equal cents cost allocation interferes with the IOUs' ability to pass on price signals.<sup>5</sup> TURN also

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<sup>1</sup> D.22-11-040 at Ordering Paragraph 3.

<sup>2</sup> Petition at 2.

<sup>3</sup> D.22-11-040 at 50-51.

<sup>4</sup> Petition at 4.

<sup>5</sup> TURN Response at 2-3.

argues that the Joint Petitioners overstate the disproportionate impact of transportation electrification cost allocation on large industrial customers.<sup>6</sup> Finally, TURN asserts that there is no basis for changing the current cost allocation of behind-the-meter transportation electrification program costs.<sup>7</sup>

Second, Cal Advocates opposes the Petition, arguing that the minor changes adopted in D.23-04-040 do not warrant modification of the transportation electrification cost recovery allocation because the changes do not alter the meaning or purposes of the EDRPs and are unrelated to cost recovery methodologies.<sup>8</sup> Cal Advocates also asserts that changing the cost allocation adopted in D.22-11-040 to SAPC will not promote demand flexibility, as the Joint Petitioner's claim, because designing price rate differentials is independent of revenue allocation.<sup>9</sup> Lastly, Cal Advocates states that D.22-11-040's equal cents per kilowatt-hour method affects all customer classes equally, and therefore, does not disproportionately impact large industrial customers, as the Joint Petitioners claim.<sup>10</sup>

Third, East Yard Communities for Environmental, Center for Community Action and Environmental Justice, Union of Concerned Scientists, and Sierra Club (East Yard Communities, collectively) oppose the Petition. East Yard Communities assert that D.22-11-040's cost allocation policy is reasonable and based on considerable comments from a broad spectrum of consumer,

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<sup>6</sup> *Id.* at 4-5.

<sup>7</sup> *Id.* at 6.

<sup>8</sup> Cal Advocates Response at 3-5.

<sup>9</sup> *Id.* at 5-7.

<sup>10</sup> *Id.* at 7-9.

environmental, and environmental justice advocates.<sup>11</sup> East Yard Communities states that D.22-11-040 is consistent with the Commission's rate design principles and the Commission's efforts to send appropriate price signals.<sup>12</sup> East Yard Communities also states that the Petition is incorrect to argue that the Commission disproportionately allocated costs to large industrial customers.<sup>13</sup>

Fourth, Pacific Gas and Electric Company (PG&E) did not support, nor did it oppose the Petition; rather, it offered certain clarifications to the underlying policies of D.22-11-040 and the Petition. PG&E states that if the Petition is granted, then PG&E would intend to apply its equal percent of total revenue allocation methodology adopted by PG&E's 2020 general rate case Phase II proceeding to allocate certain distribution and public purpose program costs.<sup>14</sup> PG&E further states that if the Commission grants the Petition, the new cost allocation should become effective on the date of the decision, to be implemented in the next rate change for each IOU.<sup>15</sup>

Fifth, San Diego Gas & Electric Company (SDG&E) positions itself as neutral toward the Petition. SDG&E provided alternative language for the Commission's review that it argues would enable a more successful implementation if a change is adopted.<sup>16</sup>

The Joint Parties filed a reply to the parties' responses on January 2, 2024. The Joint Petitioners state they agree with the clarifications proposed by SDG&E

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<sup>11</sup> East Yard Communities at 2.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Ibid.*

<sup>14</sup> PG&E Response at 1-2.

<sup>15</sup> *Id.* at 2.

<sup>16</sup> SDG&E Response at 5-6.

and PG&E.<sup>17</sup> The Joint Petitioners state that new facts support consideration of the Petition, particularly the changes adopted in D.23-04-040.<sup>18</sup>

### **1.3. Submission Date**

This matter was submitted on January 2, 2024 upon the Joint Parties' filing of their reply to the parties responses.

## **2. Standard of Review**

Public Utilities (Pub. Util.) Code Section 1708<sup>19</sup> provides that the Commission, after appropriate notice, may alter one of its prior decisions:

The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

Under the Commission's Rules of Practice and Procedure (Rules), Rule 16.4 governs petitions for modification. Rule 16.4(d) states in part:

(d) Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.

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<sup>17</sup> Joint Petitioner's Response at 2.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> Pub. Util. Code Section 701. All references to "Sections" herein are to the California Pub. Util. Code unless otherwise noted.

Rule 16.4 also requires:

- (b) A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

Timeliness Test: As stated above under Rule 16.4(d), a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. D.22-11-040 was effective on November 17, 2022. The Petition was filed on November 17, 2023. For purposes of compliance with Rule 16.4(d), the Petition has been filed within a year of D.22-11-040's issuance date of November 17, 2022.

Persuasiveness Test: Under Rule 16.4(b) if more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. Here, the persuasiveness test does not apply because the Petition was timely filed.

Rule 16.4(b) Test: Next, we consider whether the Joint Petitioners have met their burden, pursuant to Rule 16.4(b) that the Commission should exercise its discretion to modify D.22-11-040 because the Petition states with specificity the justification for the requested relief. Specifically, under the Commission's Rules, petitions for modification "must concisely state the justification for the requested relief" supported by "factual allegations ...

supported with specific citations to the record” or “[a]llegations of new or changed facts ... supported by an appropriate declaration or affidavit.”<sup>20</sup>

The Commission has discretion when ruling on a petition for modification.<sup>21</sup> In considering whether to exercise such discretion, we consider “to the extent that [the Petitioner] has provided new or changed facts, properly supported by the appropriate declaration or affidavit, we will consider issues raised in the Petition. In addition, we will consider other non-controversial modifications that provide necessary clarification.” We discuss the application of our rules as they relate to the Petition below.

### **3. Denial of Petition**

The Commission, having taken the matter under submission, denies the Petition. Rule 16.4 governs petitions for modification. Rule 16.4 derives its authority from Section 1708 that allows the Commission to rescind, alter, or amend any decision made by it.

First, we consider whether the Joint Petitioners met their substantial burden, pursuant to Rule 16.4(b), to demonstrate that the Commission should exercise its discretion to modify D.22-11-040. Petitions for modifications “must concisely state the justification for the requested relief” supported by “factual allegations ... supported with specific citations to the record” or “[a]llegations of new or changed facts ... supported by an appropriate declaration or affidavit.”<sup>22</sup> Indeed, The Commission has discretion when

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<sup>20</sup> Rule 16.4(b)

<sup>21</sup> Rules of Practice and Procedure, Rule 16.4; *see also* PG&E Corp. v. Public Utilities Com. (2004) 118 Cal.App.4th 1174, 1215 [California Pub. Util. Code Section 1708, which authorizes the Commission to “rescind, alter, or amend any order or decision made by it,” is permissive].

<sup>22</sup> Rule 16.4(b)



ruling on a petition for modification.<sup>23</sup> The Commission's exercise of authority under Section 1708 is an "extraordinary remedy" that must be "sparingly and carefully applied;"<sup>24</sup> a petition for modification is not an open forum for reconsidering the broad contours of a Commission decision.

In determining whether to exercise such discretion, we consider whether it is appropriate for Joint Petitioners to rely on information in decisions issued subsequently to D.22-11-040; and whether their presentation of "new facts" they have cited meet the threshold for the Commission to exercise its discretion under Section 1708.

The Joint Petitioners have not met this burden. The Joint Petitioners have not provided any new evidence that shows the equal cents coast allocation interferes with the IOUs' ability to pass on price signals. The Petition provides the same or similar arguments that were made during the proceeding and has not raised any new information or justification for modification of D.22-11-040. Joint Petitioners rely on information in decisions issued after D.22-11-040, particularly D.23-02-040 and D.23-04-040, and the new facts presented by Joint Petitioners have a tenuous nexus to the cost allocation in D.22-11-040, at best. Joint Petitioners have not provided any new evidence that shows the equal cents cost allocation interferes with the IOUs' ability to pass on price signals and distribute the TEF program costs across all customer classes equitably.<sup>25</sup>

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<sup>23</sup> Rules of Practice and Procedure, Rule 16.4; *see also* PG&E Corp. v. Public Utilities Com. (2004) 118 Cal.App.4th 1174, 1215 [California Pub. Util. Code Section 1708, which authorizes the Commission to "rescind, alter, or amend any order or decision made by it," is permissive]

<sup>24</sup> 2017 Cal. PUC LEXIS 514, at 7; 1998 Cal. PUC LEXIS 658, at 2.

<sup>25</sup> D.22-11-040 at 198.

Yet, Petitioners attempt to meet their burden under Rule 16.4 by predicating their request for relief according to the underlying premises of D.23-04-040 and D.23-02-040, which affirm the Commission's commitment to conservation of energy during peak hours. We agree with TURN, who correctly points out the Joint Petitioners have not presented any evidence that demonstrates equal cents allocation will weaken existing price signals that encourage customers to shift usage away from peak hours.<sup>26</sup> TURN is correct that the Petition does not provide any citations nor evidence to support their argument but only rely on D.23-04-040 and D.23-02-40 instead.<sup>27</sup>

To be sure, D.23-04-040 did indeed revise the EDRP as Joint Petitioners point out. For example, in 2023, we amended EDRP 4 to state, "[r]ates should encourage conservation and energy efficiency."<sup>12</sup> The Commission amended EDRP 4 to state, "[r]ates should encourage economically efficient (i) use of energy, (ii) reduction of greenhouse gas emissions, and (iii) electrification."<sup>28</sup> TURN is correct that nowhere in these decisions do we state that equal cents per kilowatt-hour violate this principle. We also agree with Cal Advocates that the amendments to EDRP 4 do not affect cost recovery allocation but rather, provide additional context and specificity regarding conservation, energy efficiency, and encouragement of electrification.<sup>29</sup> Cal Advocates is correct that minor changes to the language of the EDRP do not warrant modification of the cost recovery allocation adopted in D.22-11-040 because: (1) the EDRP changes do not alter the meaning or purpose of the EDRP's; and (2) are unrelated to cost recovery

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<sup>26</sup> TURN Response at 2.

<sup>27</sup> *Id.*

<sup>28</sup> D.23-04-040 at 13.

<sup>29</sup> Cal Advocates Response at 3-4.

methodologies.<sup>30</sup> We agree with Cal Advocates that the Joint Petitioners incorrectly claim that the revised EDRPs adopted in D.23-04-040 warrant modification to the cost allocation adopted in D.22-11-040.<sup>31</sup>

Similarly, we agree with Cal Advocates that the updates to EDRP 5 justifies the Joint Petitioner's request to modify D.22-11-040. For example, Joint Petitioners refer to the recently updated EDRP 5, which D.23-04-040 holds "rates should encourage customer behaviors that improve electric system reliability in an economically efficient manner."<sup>32</sup> As Cal Advocates points out, the original EDRP 5 (and EDRP 9) states that "rates should encourage reduction of both coincident and non-coincident peak demand" and that "rates should encourage economically efficient decision making."<sup>33</sup> Cal Advocates is correct<sup>34</sup> that the updates to EDRP 5 in D.23-04-040 simply harmonize and simplify language from the original EDRPs 5 (and EDRP 9) by highlighting the importance of using rates to incentive customer behavior modification toward reaching the State's new goal of improving system reliability. There is no change with the intent and meaning of EDRP 5, and D.23-04-040 recent modifications to EDRP 5 do not justify the Joint Petitioner's request to modify D.22-11-040 on such basis.

We also agree with TURN that the Joint Petitioners conflate cost allocation with rate design. TURN correctly states that rate design is "conducted separately from cost allocation and the Commission can design time-varying rates to

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<sup>30</sup> *Id.*

<sup>31</sup> Cal Advocates Response at 3.

<sup>32</sup> D.23-04-040, Ordering Paragraph 1.

<sup>33</sup> Cal Advocates Response at 4.

<sup>34</sup> *Id.*

balance various rate design principles.”<sup>35</sup> Rate design is indeed, the process of designing rates to recover each classes’ cost responsibility. The cost allocation methodology adopted in D.22-11-040 for the transportation electrification program costs does not materially impact the IOU’s ability to send price signals that align with time variance to customers. We see no evidence presented by the Petition that demonstrates this otherwise.

Finally, East Yard Communities correctly asserts that the Petition mistakenly suggests that the Commission’s cost allocation policies for behind-the-meter transportation electrification costs will worsen price signal distortions and make it difficult for customers to respond to price signals.<sup>36</sup> We previously considered these arguments but rejected them upon issuance of D.22-11-40. The presentation of these arguments does not constitute “new facts” to satisfy the Commission’s burden to exercise its discretion under Section 1708.

Therefore, the Petition is summarily denied.

#### **4. Summary of Public Comment**

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the “Public Comment” tab of the online Docket Card for that proceeding on the Commission’s website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding. There are no public comments on this matter.

#### **5. Conclusion**

This decision denies the Petition of D.22-11-010 filed by the Joint Petitioners.

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<sup>35</sup> TURN Response at 3.

<sup>36</sup> Environmental Justice at 2.

**6. Procedural Matters**

This decision affirms all rulings made by the Administrative Law Judge and assigned Commissioner in this proceeding.

**7. Comments on Proposed Decision**

The proposed decision of Commissioner Alice Reynolds in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

**8. Assignment of Proceeding**

Alice Reynolds is the assigned Commissioner and Colin Rizzo and Marcelo Poirier are the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. Rule 16.4(d) of the Commission's Rules of Practice and Procedure requires that a Petition for Modification must be filed and served within one year of the effective date of the decision proposed to be modified.

2. On November 17, 2022, the Commission adopted Decision (D.) 22-11-040 for long-term transportation electrification funding and investment from the investor-owned utilities by California's ratepayers.

3. D.22-11-040 holds that the investor-owned utilities shall recover transportation electrification program costs through distribution rates allocated on an equal cents per kilowatt hour basis, applied equally to all customer classes

4. On November 17, 2023, the Petition for Modification of D.22-11-040 by Energy Producers and Users Coalition, California Large Energy Consumers Association (Joint Petitioners).

5. The Joint Petitioners timely filed their Petition for Modification of D.22-11-040.

6. Rule 16.4(b) of the Commission's Rules of Practice and Procedure require that a petition for modification must concisely state with specificity the justification for the requested relief with allegations of new or changed facts supported by a declaration or affidavit.

7. The Joint Petitioners predicate their request for relief by misconstruing the underlying premises of subsequent Commission decisions, D.23-04-040 and D.23-02-040, in their attempt to modify D.22-11-040.

8. The Joint Petitioners have not provided any new evidence or new facts that show that D.22-11-040's cost allocation interferes with the IOUs' ability to pass on price signals.

9. The Joint Petitioners rehash the same arguments that were made during the litigation of the proceeding; have not raised any new information or justification for modifying D.22-11-040.

10. The Joint Petitioners rely heavily on the minor changes to the language of the Electric Rate Design Principles, adopted in D.23-04-040 and D.23-02-040; these minor changes to the Electric Rate Design Principles are unrelated to cost recovery methodologies.

11. There is no basis for modifying D.22-11-040's cost allocation of behind-the-meter transportation electrification program costs.

### **Conclusions of Law**

1. The Joint Petitioners have not met their burden for the Commission to exercise its discretion under Section 1708.

2. The Petition for Modification of D.22-11-010 filed by the California Large Energy Consumers Association and Energy Producers and Users Coalition should be denied.

**O R D E R**

**IT IS ORDERED** that:

1. The Petition for Modification of Decision 22-11-010 filed by the California Large Energy Consumers Association and Energy Producers and Users Coalition is denied.
2. Rulemaking 18-12-006 is closed.

This order is effective today.

Dated \_\_\_\_\_, at Sacramento, California.