BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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Application of Chevron Products Company and Valero Marketing Supply Company for Rehearing of Resolution O-0098

CHEVRON PRODUCTS COMPANY AND VALERO MARKETING SUPPLY COMPANY APPLICATION FOR REHEARING OF RESOLUTION O-0098

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Pursuant to Rule 16.1 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission" or "CPUC") and Section 1731 of the California Public Utilities Code, Chevron Products Company (a Chevron U.S.A. Inc. division) ("Chevron") and Valero Marketing and Supply Company ("VMSC") (together "Joint Protestants") hereby submit this Application for Rehearing, or in the Alternative Clarification, of Resolution O-0098 ("O-0098") granting Advice Letter 27-O ("AL 27-O"). This application is timely filed within 30 days of February 6, 2026, the date the Commission issued and mailed Resolution O-0098.

I. ELIBILITY TO FILE FOR REHEARING

Rule 16.2(b) permits an application for rehearing of a resolution to be filed by "any person who has served written comments on a draft or alternate resolution pursuant to Rule 14.5." Joint Protestants filed comments on Draft Resolution O-0098 pursuant to Rule 14.5 on January 22, 2026. Therefore, Joint Protestants are eligible to file this application for rehearing. Rule 16.1(a) requires that applications for rehearing must be filed "within 30 days after the date the Commission mails the order or decision." Resolution O-0098 was issued on February 6, 2026, making the 30th day March 8, 2026, which was a Sunday. Pursuant to Rule 1.15, the deadline for filing applications of rehearing for Resolution O-0098 falls on the next business day. This application is timely.

II. BACKGROUND AND SUMMARY

San Pablo Bay Pipeline Company, LLC ("SPBPC") and Crimson California Pipeline L.P. ("Crimson," together with SPBPC, the "Crimson Utilities") operate a single "Combined System"[1] that transports crude oil from the San Joquin Valley ("SJV") to refineries in the San Francisco Bay Area. On June 9, 2025—during the pendency of three ongoing rate cases involving the Combined System—the Crimson Utilities filed AL 27-O, which requests an "interim" or "emergency" rate increase on the Combined System from $2.3571 to $3.7527 per barrel, a 59.2% increase. AL 27-O is the Crimson Utilities' fourth request for an interim rate increase above ten percent. The three prior requests were all rejected on the basis that the Commission lacked the statutory authority to grant interim rate increases above ten percent. Inexplicably, O-0098 grants the Crimson Utilities' request in full. As described below, the Commission should grant rehearing and reverse O-0098 as contrary to the public interest, unsupported by substantial evidence, and beyond the Commission's authority under the Public Utilities Code.

A. Section 455.3 of the Public Utilities Code and Industry Rule 8

Rate changes for California intrastate oil pipelines are governed by section 455.3 of the Public Utilities Code.[2] The legislative history shows that the State Assembly carefully considered the competing interests of pipelines and shippers when crafting section 455.3. Specifically, it was intended to allow oil pipelines a way to increase rates more quickly while also "protect[ing] shippers from extraordinary rate increases . . . "[3]

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[1] O-0098 refers to the "SPB-KLM" System. However, the two systems were merged into one entity under SPBPC's tariff via Advice Letters 29-O and 59-O. Therefore, this Application will use the term "Combined System."

[2] Cal. Pub. Util. Code § 455.3.

[3] Cal. S. Rules Comm., Analysis of Assemb. B. No. 515, 1995-1996 Reg. Sess. (July 19, 1995); *see also* ALJ's Ruling Denying Request for Interim Rate Relief at 3, *Crimson Cal. Pipeline,*

Section 455.3 authorizes oil pipelines—uniquely among California utilities—to implement rate increases prior to Commission approval upon 30-days-notice.[4] The statute is clear, however, that "[a]ny increase in the shipping rate charged by an oil pipeline corporation prior to commission approval shall not exceed 10 percent per 12-month period."[5] Conversely, and also unique to oil pipelines, the statute instructs the Commission to "determine the appropriateness of allowing retroactive charge and collection of subsequently approved rate increases above 10 percent."[6]

The Commission implemented this provision in Energy Industry Rule 8, which allows an oil pipeline to implement a 10 percent rate increase upon 30-days' notice.[7] The rule clarifies that "if a requested increase exceeds a maximum of 10 percent per 12-month period, only the portion of the rate increase not exceeding that maximum may be effective pending disposition."[8]

B. The Crimson Utilities' Prior Requests for "Emergency" and Other Interim Rate Relief in Excess of the 10 Percent Statutory Maximum

AL-27 is the fourth attempt by the Crimson Utilities seeking a rate increase above the ten percent threshold based on allegedly disappointing cash flows and losses. All prior requests were rejected on the basis that the Commission lacks statutory authority to grant the requested relief.

The first such request was made in 2016, where Crimson requested "emergency" relief for its Southern California operations because it was allegedly operating at a loss.[9] This request was

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L.P., Docket No. A.22-06-017 (Mar. 13, 2023) (Rambo, J.) ("In allowing retroactive charges, the Legislature addressed the equitable concerns raised by Crimson in its motion [for interim rate relief].") ("Second Crimson IRR Ruling").

4 Cal. Pub. Util. Code § 455.3(b)(2).

5 *Id.* § 455.3 (b)(5).

6 *Id.*

7 Energy Industry Rule 8.1.

8 *Id.*

9 Amendment to Application at 3-5, *Crimson Cal. Pipeline, L.P.*, Docket No. A.16-03-009 (June 15, 2016) ("First Crimson Request for Emergency Rate Relief").

rejected by the Presiding Judge, with Crimson being told "there is no statutory provision for granting an increase of more than 10% without a hearing."[10] Crimson sought reconsideration that was not granted.

In 2022, Crimson made its second request, also concerning its Southern California operations.[11] There, Crimson argued interim relief was justified because "its current rates are not sufficient to permit a reasonable opportunity to recover its costs of providing transportation."[12] This request was also rejected by the Presiding Judge, with Crimson's arguments found to be "inconsistent with the plain language of the statute."[13] Crimson's concerns about revenue shortfalls were fully addressed by the legislature in granting pipelines the potential "ability to retroactively collect the difference between the interim and authorized rates."[14]

Less than a year later, Crimson (together with SPBPC) filed another "emergency" request for similar relief regarding the Combined System.[15] This request alleged that "significant revenue shortfall presents an immediate threat that the Crimson Utilities may be unable to provide transportation of oil on [their] pipeline systems on a safe and reliable basis and, therefore, may be forced to cease operations."[16] This third request was again rejected by the Presiding Judge on the

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10 Ruling Denying Relief Requested in Amended Application at 1, *Crimson Cal. Pipeline, L.P.*, Docket No. A.16-03-009 (Aug. 5, 2016) (Miles, J.) ("First Crimson IRR Ruling") (continuing that this was "particularly" the case "since several parties protest[ed] the relief sought by Crimson").

11 Motion for Interim Rate Relief, *Crimson Cal. Pipeline L.P.*, Docket No. A.22-06-017 (Dec. 13, 2022).

12 *Id.* at 7.

13 Second Crimson IRR Ruling at 2.

14 *Id.* at 3.

15 Motion for Emergency Rate Relief, *Crimson Cal. Pipeline L.P.*, Docket Nos. A.22-07-015, *et. al.* (Nov. 7, 2023).

16 *Id.* at 2.

basis that "[t]he statutory scheme ha[d] not changed since Crimson's previous request," and it still did not allow the Commission to grant the requested relief.[17]

In the decision on Crimson's 2023 rate case—D.24-05-007—the Commission affirmed the denial of Crimson's request and sought to stop these perpetual "emergency" requests.[18] The Commission noted that section 455.3 "entitle[s] [oil pipelines] to an interim rate increase of up to 10% per 12-month period" while "the Commission considers an application for a permanent rate increase."[19] The Commission's "authority regarding the interim increase is limited to requiring a delay of up to 30 days beyond the required notice period."[20] The Commission emphasized that section 455.3 provides the *sole* authority for oil pipelines to increase their rates on an interim basis because "[s]ection 455.3 is clear in exempting oil pipeline corporations from any other statutory or regulatory scheme available to other classes of utilities seeking interim rate relief while a rate increase is pending."[21] Finally, the Commission cautioned oil pipelines that *"[a]bsent a change to the statutory scheme, we consider this matter settled and direct oil pipeline corporations to proceed accordingly*."[22]

C. The Crimson Utilities' Ongoing Rate Cases

The Crimson Utilities are currently litigating three general rate cases for the Combined System. First, there is a rate case for a Test Period of calendar year 2023 (the "2023 GRC"),

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17 Administrative Law Judge's Ruling Denying Request for Interim Rate Relief at 3-4, *Crimson Cal. Pipeline L.P.*, Docket Nos. A.22-07-015, *et al.* (Dec. 4, 2023) (Rambo, J.) ("Third Crimson IRR Ruling").

18 D.24-05-007 at 29-30, *Crimson Cal. Pipeline L.P.* (2024), *aff'd* D.24-12-027 (2024).

19 *Id.* at 29.

20 *Id.*

21 *Id.* at 30.

22 *Id.* (emphasis added).

docketed as Proceeding No. A.22-07-015. Second, there is a rate case with a Test Period of calendar year 2024 ("2024 GRC"), docketed as Proceeding No. A.24-01-016. Third, there is rate case with a Test Period of calendar year 2025 ("2025 GRC"), docketed as Proceeding No. A.25-01-009. These proceedings all remain pending, subject to ongoing settlement discussions.

1. The 2023 GRC

Between July 29, 2022, and March 3, 2023, Crimson and SPBPC filed three applications with the Commission that were all consolidated into one proceeding.[23] The Crimson Utilities sought rates to be set at $2.4210 per barrel on SPB System routes and $2.9210 per barrel on KLM routes. The evidentiary hearing on the 2023 GRC was held virtually from February 5, 2024, through February 15, 2024—those dates having been much expedited following the Crimson Utilities' "emergency" motion discussed below.

On June 26, 2025, the Commission approved D.25-06-044, setting a rate for movements on the Combined System at $1.9566 a barrel.[24] Notably, the Commission was "satisfied that the evidence supports Carriers' conclusion that oil production, and its related throughput volumes, have historically declined and will continue to do so," and adopted a throughput number reflecting those declines.[25] However, the Commission also found many of the Crimson Utilities' cost claims to be inflated and inappropriately incorporated non-recoverable expenses incurred by CorEnergy Infrastructure Trust, Inc ("CorEnergy") a minority, passive investor in the Crimson Utilities.[26]

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[23] Assigned Commissioner's Scoping Memo and Ruling, *Crimson Cal. Pipeline L.P.*, Docket Nos. A.22-07-015, *et al.* (June 2, 2023).

[24] D.25-06-044 at 42-44, *Crimson Cal Pipeline L.P.* (2025).

[25] *Id.* at 39-41 (adopting a throughput level of 29,457,864 barrels compared to 28,756,304 put forward by the Crimson Utilities and 31,761,593 barrels put forward by the protesting shippers).

[26] *Id.* at 9-29.

Proceedings in the 2023 GRC remain pending, as the Crimson Utilities and VMSC (along with California Resources Corporation ("CRC")) filed applications for rehearing, which the Commission has not yet ruled on.

2. The 2024 GRC

On January 25, 2024, the Crimson Utilities filed the 2024 GRC, requesting a further ten percent interim increase in furtherance of the rate increase sought in the 2023 GRC.[27] VMSC, Chevron, and CRC protested the 2024 GRC on February 29, 2024. Following a telephonic prehearing conference, A.24-01-016 was stayed pending the Consolidated GRC's outcome.[28]

On July 18, 2025, SPBPC filed an amendment to the 2024 GRC.[29] In addition to the ten percent increase, SPBPC requested an additional increase of 44.84 percent for the period March 1, 2024, through March 1, 2025. VMSC, Chevron, and CRC subsequently protested the amended application and moved to dismiss the entire application on August 18, 2025. A prehearing conference on the amended application was held on October 24, 2025. A Scoping Memo has not been issued yet, and the 2024 GRC remains pending.

3. The 2025 GRC

On January 29, 2025, the Crimson Utilities filed the 2025 GRC, requesting an increase in SPBPC rates by 49.27 percent and Crimson California rates by 23.72 percent.[30] Separate protests were filed by Chevron and PBF Holding Company LLC. In responding to these protests, the Crimson Utilities "recognize[d]" that protest allegations "warrant further investigation through the

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27 *See* Application, *San Pablo Bay Pipeline Co.*, Docket No. A.24-01-016 (Jan. 25, 2024).

28 D.25-07-021 at 1-2, *San Pablo Bay Pipeline Co.* (2025) (order extending statutory deadline).

29 Amendment to Application, *San Pablo Bay Pipeline Co.*, Docket No. A.24-01-016 (July 18, 2025).

30 *See* Application, *San Pablo Bay Pipeline Co.*, Docket No. A.25-01-009 (Jan. 29, 2025).

Commission's discovery and evidentiary hearing process" and that "the appropriate course is for the Commission to set this matter for evidentiary hearing."[31]

A Scoping Memo has not yet been issued in the 2025 GRC. At the prehearing conference, counsel for the Crimson Utilities indicated their intent to file a motion to amend its Application in order to seek a larger rate increase.[32] Despite the Crimson Utilities' "emergency" claim that such rates are required to continue operations "beyond the summer of 2025,"[33] no such amendment was filed.

D. The Crimson Utilities Cease Operations

The Combined System is no longer used. It moved its last volumes in November 2025, and there were no nominations in January or February of this year.[34] Shippers, including Joint Protestants and PBF Holdings Company, LLC ("PBF"), either discontinued operations or switched to alternative means of supply and transportation because it is not cost-effective to ship on the Combined System at the current rates.

Furthermore, the markets served by the Combined System no longer require the pipeline's service; at least not at the rates charged and requested. As mentioned above, the Combined System delivers to two refineries in the San Francisco Bay Area: VMSC's Benicia refinery and PBF's

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[31] Reply to Protest of Chevron Products Company at 5, *San Pablo Bay Pipeline Co.*, Docket No. A.25-01-009 (Mar. 17, 2025); Reply to Protest of PBF Holdings Company, LLC at 6-7, *San Pablo Bay Pipeline Co.*, Docket No. A.25-01-009 (Mar. 17, 2025).

[32] *See also* AL-47 at Attachment A, Decl. of Robert A. Waldron ¶ 12 n. 2 ("Given the 2025 Volume Loss, the Crimson Utilities intend to amend A. 25-01-009 to reflect current volumes and to increase the requested rate increase.") ("Waldron Declaration").

[33] AL-47 at 15.

[34] Joint Protestant Comments on Draft Resolution at 2-4; O-0098, Attachment A at 2 ("Shipper nominations for December are 0 barrels per day"); Crimson Utilities Comments on Draft Resolution at 3 ("nominations for January and February [2026] are zero for shipments to the Bay Area").

Martinez refinery. Both refineries made the final decision to stop operations on the pipeline, including requesting their linefill be returned. VMSC has idled operations at Benecia, and PBF terminated shipping on the Combined System in mid-2025. PBF thus notified the Crimson Utilities that it is more economical to supply its Martinez refinery via other means, including waterborne operations.[35]

E. Advice Letter 27-O and Resolution O-0098

Crimson served AL-27 on June 9, 2025. AL-27 sought an increase on the Combined System rates from $2.3571 to $3.7527 per barrel, an increase of 59.2 percent and approximately 91.8 percent higher than the rate authorized in D.25-06-044. AL-27 asked that this increase be made effective upon 30 days' notice. However, AL-27 did not ask to establish the ultimate just and reasonable rates in this proceeding. Rather, AL-27 contemplated that the increase would be "subject to refund with interest," as the Commission would make a "final determination on the requested relief in [the 2025 GRC] proceeding."[36] The Crimson Utilities stated that this relief was necessary "in order to maintain safe and reliable utility service on the" Combined System.[37]

On January 2, 2026, the Commission's Energy Division issued a Draft Resolution ("DR"), granting the Crimson Utilities' request. Unlike all prior ALJ decisions and Commission orders, the Energy Division engaged in its own statutory and regulatory interpretation and found the authority to provide an interim rate increase through section 701 of the Public Utilities Code, which authorizes the Commission to "do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and

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35 O-0098, Attachment A at 6, 8.

36 AL-27 at 2 & n.3.

37 *Id.* at 1.

jurisdiction."[38] According to the DR, section 455.3(b)(5) "does not limit the Commission's authority to approve an interim rate increase exceeding ten percent, but rather limits what rates a pipeline utility may implement unilaterally absent Commission approval."[39] The Energy Division relied on this authority to grant the interim request, finding that relief was appropriate "[t]o avoid further potential operational disruptions of [the Combined System], which would result in negative consequences."[40] The Energy Division did not characterize this as disposing of the Crimson Utilities applications but rather "emphasize[d] that this is an *interim* rate increase, with the final rates and any refunds to be determined in Crimson's pending General Rate Increase proceeding, A.25-01-009."[41]

Joint Protestants and the Crimson Utilities submitted Opening Comments on the DR on January 22, 2026, and Reply Comments on January 26, 2026. On February 6, 2026, the Commission issued the Final Resolution, which responded to the comments and approved the Draft Resolution without change.

III. ARGUMENT

O-0098 contains discrete, clear factual and legal errors, most notably that it expands the Commission's ability to grant "emergency" rate increases to oil pipelines beyond the authority conferred to it by the California State Assembly. This error is especially egregious since there is no substantial evidence supporting its finding that an "emergency" exists, or any rational explanation for how the interim increase will solve the supposed emergency. Indeed, the fact that the Combined System has long ceased operations due to uneconomically high rates proves that no

38 Draft Resolution at 7 (quoting Cal. Pub. Util. Code § 701).

39 *Id.* at 8.

40 *Id.* at 12.

41 *Id.* (emphasis added).

emergency increase could provide any benefit. The Commission must correct these errors on rehearing to ensure its decision is consistent with its precedent and the commands of the legislature, as well as to protect shippers from abuse of claimed "emergency" rate increases contrary to established statutory and regulatory dictates going forward.

A. Applicable Standard

Applications for rehearing are governed by sections 1731 to 1736 of the Public Utilities Code and Article 16 of the Commission's Rules of Practice and Procedure. Specifically, the Commission may grant rehearing "if in its judgment sufficient reason is made to appear"[42] and may modify the original order where "the commission is of the opinion that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed."[43] Applications for rehearing must specifically set forth "the grounds [] the applicant considers the order or decision of the Commission to be unlawful or erroneous."[44] The purpose of such applications is "to alert the Commission to a legal error, so that the Commission may correct it expeditiously."[45] Legal errors the Commission might commit include (1) acting "without, or in excess of, its powers or jurisdiction"; (2) "not proceed[ing] in the manner required by law"; (3) making a decision "not supported by the findings"; (4) making findings "not supported by substantial evidence in light of the whole record"; and (5) making decisions or orders that are "an abuse of discretion."[46] Further, when courts review the exercise of the Commission's discretion, the scope of review is generally limited "to whether the decision was arbitrary, capricious, or

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42 Cal. Pub. Util. Code § 1731(b)(1).

43 *Id.* § 1736.

44 Commission's Rules of Practice and Procedure, Rule 16.1(c).

45 *Id.*

46 Cal. Pub. Util. Code § 1757(a) (also including violating constitutional rights).

entirely lacking in evidentiary support," however, the court still "must ensure that [the Commission] has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute."[47]

The Commission acts in excess of its powers and fails to proceed in the manner required by law when it "fail[s] to comply with required procedures, appl[ies] an incorrect legal standard, or commit[s] some other error of law."[48] The California Supreme Court recently reaffirmed that "the proper interpretation of a statute is ultimately the court's responsibility."[49] The courts' "fundamental task in interpreting a statute is to determine the Legislature's intent so as to effectuate the law's purpose."[50] In interpreting statutes, the first step is to consider "the words of the statutes, as statutory language is generally the most reliable indicator of legislation's intended purpose."[51] In this task, the Commission should "consider the ordinary meaning of the relevant terms, related provisions, terms used in other parts of the statute, and the structure of the statutory scheme."[52] If more than one interpretation is reasonable, appropriate extrinsic sources include "the statute's purpose, legislative history, and public policy."[53] Deference might be granted to the Commission's

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47 *Securus Techs., LLC v. Commission*, 88 Cal. App. 5th 787, 803 (2023) (cleaned up) (quoting *Am. Bd. of Cosm. Surgery v. Med. Bd. of Cal.*, 162 Cal. App. 4th 534, 547-48 (2008)).

48 *Pedro v. City of Los Angeles*, 229 Cal. App. 4th 87, 99 (2014) (citing *Env't Prot. Info. Ctr. v. Cal. Dep't of Forestry & Fire Prot.*, 44 Cal. 4th 459, 479 (2008); *City of Marina v. Bd. of Trs. of Cal. State Univ.*, 39 Cal. 4th 341, 355 (2006)). *See also S. Cal. Edison Co. v. Commission*, 140 Cal. App. 4th 1085, 1106 (2006) (agency must follow its own rules and allow parties sufficient time to respond to new proposals).

49 *Prang v. L.A. Cnty. Assessment Appeals Bd.*, 15 Cal. 5th 1152, 1186 (2024) (quoting *Am. Coatings Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 54 Cal. 4th 446, 462 (2012)).

50 *Id.* at 1170 (quoting *Coal. of Concerned Cmtys., Inc. v. City of Los Angeles*, 34 Cal. 4th 733, 737 (2004)).

51 *Id.* (quoting *McHugh v. Protective Life Ins. Co.*, 12 Cal. 5th 213, 227 (2021)).

52 *Id.* (quoting *McHugh v. Protective Life Ins.*, 12 Cal. 5th at 227).

53 *Id.* (citing *Coal. of Concerned Cmtys. v. City of Los Angeles*, 34 Cal. 4th at 737).

interpretation but only "to the extent that [it is] embodied in quasi-legislative regulations or constitute[s] long-standing, consistent, and contemporaneous interpretation[]."[54]

B. The 59.2% Interim Rate Increase Granted in O-0098 Violates the Applicable Statutes and Exceeds the Commission's Authority

The Commission committed legal error by acting "in excess of its powers" in granting the interim rate increase.[55] Neither section 455.3 nor section 701 of the Public Utilities Code give the Commission the authority to permit an oil pipeline to implement more than a ten percent increase on an interim basis.

In O-0098, the Commission gives three reasons why section 455.3 does not limit interim rate increases to 10 percent, none of which has merit. First, O-0098 relies on general authority while acknowledging that the more specific authority specifically limits the Commission's regulatory authority and discretion. Second, O-0098's illogically relies on the Commission's authority to finally dispose of applications, yet is clear that it is *not* finally disposing of the application here, which will still require a full hearing. Third and finally, O-0098 arbitrarily failed to consider the relevant factors and precedent. It claims that no contrary authority is binding but arbitrarily ignores the Commission's unambiguous decisions on the issue and related rationale and fails to address the logic of the applicable administrative law judge rulings.

Section 455.3 of the Public Utilities Code is clear that "[a]ny increase in the shipping rate charged by an oil pipeline corporation prior to commission approval shall not exceed 10 percent per 12-month period."[56] Industry Rule 8 mirrors this requirement and states that "if a requested increase exceeds a maximum of 10 percent per 12-month period, only the portion of the rate

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54 *Id.* (quoting *McHugh v. Protective Life Ins.*, 12 Cal. 5th at 227).

55 Cal. Pub. Util. Code § 1757(a)(1).

56 *Id.* § 455.3(b)(5).

increase not exceeding that maximum may be effective pending disposition."[57] The "plain language of the statute" therefore is that this ten percent mechanism "is the exclusive authority for interim rate relief in oil pipeline rate cases."[58] Indeed, the "Commission has consistently interpreted section 455.3 as the exclusive authority by which oil pipeline corporations may obtain interim rate relief and as limiting that interim rate relief [to] 10% per 12-month period."[59]

O-0098 fails to overcome the clear statutory language prohibiting interim oil pipeline relief in excess of 10 percent. O-0098 attempts to rely on the Commission's "broad authority to grant interim or emergency rate relief" under section 701's authority to "do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."[60] And in response to comments on the DR, the Commission stated that section 455.3 "does not restrict the Commission's broader authority to authorize interim rates."[61] This is untenable given the express and unambiguous language of section 455.3 that it governs "[n]otwithstanding any other provision of law."[62] Moreover, this statement is in direct conflict with other parts of O-0098, where the Commission expressly

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57 Energy Industry Rule 8.1.

58 Second Crimson IRR Ruling at 3.

59 Third Crimson IRR Ruling at 3.

60 O-0098 at 7.

61 *Id.* at 16.

62 Cal. Pub. Util. Code § 455.3(a). This statutory phrase is a "term of art" that "expresses a legislative intent 'to have the specific statute control despite the existence of other law which might otherwise govern.'" *People v. Franklin*, 57 Cal. App. 4th 68, 73-74 (1997) (quoting *People v. DeLaCruz*, 20 Cal. App. 4th 955, 963 (1993)), *reh'g denied*, 57 Cal. App. 4th 1138A (1997).

acknowledges that its discretion to grant interim relief to oil pipelines has been limited by the Legislature in section 455.3.[63]

Moreover, O-0098's logic equally violates traditional tools of statutory construction. It is black letter law that general statutory provisions do not trump or otherwise control specific ones.[64] This is especially important where, as here, a general grant of authority is invoked to override a statutory *prohibition.*[65] The Commission's general authority under section 701 cannot be read to nullify section 455.3's restrictions on interim rate increases. O-0098 fails to recognize that this statute and its implementing regulations directly limit the Commission's discretion, which takes away any plenary power the Commission may otherwise possess.

Rather, relying on Industry Rule 8, O-0098 erroneously tries to have it both ways: claiming that it is both disposing and not disposing of the Advice Letter. Specifically, O-0098 relies on Industry Rules 8.1 and 8.2 for the notion that "the Commission has authority to approve advice letters requesting rate increases greater than 10 percent by resolution."[66] However, O-0098 ignores that Rules 8.1 and 8.2 only empower the Commission to "*dispose*" of rate change applications by resolution.

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63 O-0098 at 8 ("Notably, the Commission has no discretion to deny this increase of up to 10 percent during the pendency of review.").

64 *See Rose v. State*, 19 Cal. 2d 713, 723-24 (1942) ("It is well settled . . . that a general provision is controlled by one that is special, the latter being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.").

65 *Dep't of Child. & Fam. Servs. v. Superior Ct.*, 87 Cal. App. 4th 1161, 1168 (2001) (The "general . . . standard cannot supplant the specific prohibition.") (citing *Lake v. Reed*, 16 Cal. 4th 448, 464 (1997)).

66 O-0098 at 10-11.

Specifically, Industry Rule 8.1 is clear that "if a requested increase exceeds a maximum of 10 percent per 12-month period, only the portion of the rate increase *not exceeding that maximum* may be effective pending *disposition*."[67] And the portion of Industry Rule 8.2 emphasized in O-0098 states "[a]n advice letter that either is protested or requests a rate increase exceeding the maximum will be *disposed of* by resolution."[68]

It is evident that disposition refers to the final disposition of the rate change itself: "For an advice letter that requests a rate increase *exceeding the maximum*, the *disposition* of the advice letter *will* determine the appropriateness of allowing retroactive charge and collection of *an approved rate increase* above the maximum."[69] This language ("the disposition . . . will determine") is mandatory upon the Commission and requires a full disposition of the entire rate change application. That a full and final disposition is required is established by the fact that Rule 8.2 directs that following a "disposition," "refunds" will be established for "all shippers," with interest, and "retroactive charge and collection of an approved rate increase" will be confirmed.[70]

The relief in O-0098 is entirely incompatible with these regulations because it does not fully and finally "dispose of" SPBPC's rate change. Rather, it is emphatic that "the merits of [the Crimson Utilities'] rate requests will be resolved in a formal proceeding, with opportunity for hearings on evidence presented, and that [the] authorization here is subject to refund and additional protections specified below."[71]

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67 Energy Industry Rule 8.1 (emphasis added).

68 Energy Industry Rule 8.2 (emphasis added).

69 *Id.* (emphasis added).

70 *Id.*

71 O-0098 at 10-11.

There is no such thing as an "interim disposition"—the rate change is either disposed of or it is not.[72] If it is disposed of, the rate change is accepted. If it is not disposed of, then it must be limited to 10 percent, subject to refund. The Commission cannot evade these limitations on its power by creating out of whole cloth a new category of uncapped rate changes that can be put into effect and decided later. Moreover, the Crimson Utilities' actual rate change application (in the 2025 GRC) only seeks to increase its rates to $3.6137/bbl.[73] Nowhere does the Commission explain how the applicable statutes and regulations authorize an interim rate increase *above* what could ultimately be set upon disposition of the actual rate increase application.

C. O-0098 Violates the Applicable Law and Constitutes an Abuse of Commission Discretion by Ignoring Clear, Controlling Precedent

Resolution O-0098 also fails to proceed in the manner required by law and abuses Commission discretion because it violates and does not meaningfully address the clear, controlling precedent of the Commission and its ALJ division. In defending its new-claimed authority, the Commission cites several cases for the general notion that it can provide interim relief when there is no statutory restriction.[74] And in response to comments, it reaffirms that these "numerous precedents" demonstrate its authority to order the requested relief. But not one of these cases involved an oil pipeline and its unique statutory and regulatory structure, and, therefore, do not speak to the Commission's ability to ignore the provisions of section 455.3 restricting interim

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[72] *See* Disposition, Black's Law Dictionary at 3 (12th ed. 2024) ("The act of getting rid of or putting away something, esp. by way of authoritative or final decision; a final settlement or determination").

[73] *See* Application, Exhibit No. MJW-2 at 2, *San Pablo Bay Pipeline Co.*, Docket No. A.25-01-009 (Jan. 29, 2025).

[74] O-0098 at 8-9 (citing D.19-04-039, *Pac. Gas & Electric. Co.* (2019); D.02-07-031, *Sierra Pac. Power Co.* (2002); D.16-08-003, *S. Cal. Gas Co.* (2016); D.88-05-074, *S. Cal. Edison Co.*, 1988 Cal. PUC LEXIS 503 (1988); *S. Cal. Edison Co. v. Peevey*, 31 Cal. 4th 781 (2003); *TURN v. Commission*, 44 Cal. 3d 870 (1988); *Securus Techs. v Commission*, 88 Cal. App. 5th 787).

relief. Accordingly, these relied-on cases do not provide any support for the notion that the Commission has the authority to order the interim relief the Crimson Utilities seek.

However, the Commission's applicable precedent clearly precludes this reading. Specifically, in D.24-05-007, the Commission endorsed the findings of those ALJ orders and tried to put an end to Crimson's perpetual "emergency" requests.[75] The Commission said, in no uncertain terms, that *its* "authority regarding the interim increase is limited to requiring a delay of up to 30 days beyond the required notice period."[76] Contrary to the Commission's attempt to invoke alleged general authority or authority related to other industries, D.24-05-007 explained that "[s]ection 455.3 is clear in exempting oil pipeline corporations from any other statutory or regulatory scheme available to other classes of utilities seeking interim rate relief while a rate increase is pending."[77] Finally, the Commission cautioned that "[a]bsent a change to the statutory scheme, we consider this matter settled and direct oil pipeline corporations to proceed accordingly."[78]

In response to comments directly raising this precedent, the Commission claims that (1) the discussion in D.24-05-007 on the interim request "was not necessary to the disposition of the matter and therefore lacks precedential effect," and (2) the "factual circumstances and policy considerations" were "materially different" in that proceeding.[79] Both of these arguments are without substance.

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75 D.24-05-007 at 29-30.

76 *Id.* at 29.

77 *Id.* at 30.

78 *Id.*

79 O-0098 at 16.

First, a general rate case finally disposes of all issues in a rate proceeding, including interim rate requests. In other parts of O-0098, the Commission recognizes this fact.[80] Accordingly, D.25-05-007's discussion of the Commission's interim rate authority does, in fact, constitute binding precedent, and the Commission does "not proceed[] in a manner required by law"[81] when it modifies that decision by resolution. The Commission can only modify a binding Commission decision in a formal proceeding.[82] Second, the "factual circumstances and policy considerations" were the same in the prior requests. Crimson has made the same arguments supporting its "emergency" rate increases for nearly ten years.[83] More importantly, the Commission does not explain how changing "factual circumstances and policy considerations" could impact its statutory authority under the Public Utilities Code. The Commission, like all administrative agencies, is a "creature of statute and only possesses such powers as may be conferred on it."[84] Changing "factual circumstances" do not provide an opportunity for the Commission to acquire powers the legislature did not give it. Accordingly, neither of these arguments gives the Commission leeway to ignore this precedent.

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80 *Id.* at 11 ("We note, however, that the merits of Crimson's rate requests will be resolved in a formal proceeding, with opportunity for hearings on evidence presented, and that our authorization here is subject to refund and additional protections specified below.").

81 Pub. Util. Code § 1757(a)(2).

82 *See* General Order No. 96-B, General Rule 5.2(1) (providing that a utility cannot use an advice letter to request "modification of a decision issued in a formal proceeding or otherwise seek[] relief that the Commission can grant only after holding an evidentiary hearing, or by decision rendered in a formal proceeding").

83 *See* Motion for Interim Rate Relief at 12-15, *Crimson Cal. Pipeline L.P.*, Docket No. A.22-06-017 (Dec. 13, 2022) (requesting interim rate increase "[t]o preserve [the Crimson Utilities'] financial integrity as a public utility").

84 *People v. Harter Packing Co.*, 160 Cal. App. 2d 464, 467 (1958).

O-0098 also fails entirely to address the ALJ division precedent, claiming only that they are not binding.[85] But this fails to address the clear and thoughtful logic of those ALJ orders, which said in no uncertain terms that "[t]he Commission has consistently interpreted Public Utilities Code section 455.3 as the exclusive authority by which [pipelines] may obtain interim rate relief and as limiting that interim rate relief to 10% per 12-month period."[86] The Commission's failure to confront contrary and detailed holdings and articulate a reasoned response is a clear error.

O-0098's incompatibility with the clear dictates of Commission precedent renders it legally erroneous. The Commission should reverse and vacate this Resolution and any of the relief it purports to grant—especially given the unambiguous fact that there is no emergency confronting the Combined System.

D. Resolution O-0098's Conclusion that an Emergency Exists Is Not Supported by Substantial Evidence and Constitutes an Abuse of Discretion

Even if the Commission had authority under "emergency" circumstances to grant the interim rate increase (which it does not), the standard for such relief was not met here. The Combined System is no longer used, especially at its current rates, and shippers moved onto more cost-efficient options. Accordingly, there is no emergency here to solve, and the Commission's "solution" to increase the pipeline's rates will not bring back shippers.

Where emergency, interim, or injunctive relief is not barred by statute, all of the following five factors must be met before it is granted.[87] First, "an 'emergency' [must] exist" i.e. "a large

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85 O-0098 at 9.

86 Third Crimson IRR Ruling at 3.

87 D.20-04-039 at 12-13, *Panamint Valley Limestone, Inc. v. Searles Domestic Water Co.*, (2020).

number of utility customers [would] lose service (or suffer some comparable disadvantage) absent immediate action by the Commission."[88] Second, "the party seeking interim relief [must be] likely [to] prevail on the merits."[89] Third, "the party seeking interim relief [must] suffer irreparable injury without the order."[90] Fourth, granting the relief must not "cause substantial harm to the nonmoving party and others."[91] And, finally, "granting relief [must be] in the public interest."[92] When evaluating a request for non-"emergency" injunctive relief, the Commission has required the moving party to establish all but the first factor.[93] Evaluating these required factors shows that emergency relief is not warranted here.

First, no emergency exists. Not only are there not a "large number of utility customers [that will] lose service . . . absent" the interim rate increase;[94] there are *no customers* that will lose service. There are no shippers that currently use the Combined System because it is no longer economical to do so at the rates charged, and whether the pipeline survives or closes, that reality will remain the same. The interim increase (which is really a one-time payment for past service) will only provide additional funds to the Crimson Utilities' owners, despite their refusal to appropriately finance their regulated assets. Apparently, the Crimson Utilities' owners decided

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88 *Id.* at 12.

89 *Id.*

90 *Id.*

91 *Id*. at 13.

92 *Id.*

93 D.23-10-032 at 35-36, *Nagel v. Pac. Gas & Elec. Co.* (2023) ("To obtain that relief, the moving party must show *all* of the following: (1) irreparable injury to the moving party without the [restraining order]; (2) no harm to the public interest; (3) no substantial harm to other interested parties; and (4) a likelihood of prevailing on the merits.") (brackets in original, emphasis added) (citing D.09-08-030 at 6-7, *S.D. Gas & Elec. Co.* (2009)).

94 D.20-04-039 at 12.

that they are unwilling to invest more money in the Crimson Utilities, which is logical given that the pipeline has no customers. This is not an "emergency." The Commission does not grant emergency relief merely "because one of the parties' business plans changed."[95] Rather, a "regulated utility has no constitutional right to a profit, and a company that is unable to survive without charging exploitative rates has no entitlement to such rates."[96]

The Commission's Rules of Practice and Procedure further counsel that no emergency exists here. Rule 14.6(a) provides eight non-exclusive examples of "unforeseen emergency situation[s]" that "require[] action or a decision by the Commission more quickly than would be permitted" by its normal procedures.[97] This rule makes clear that "a rate increase is not an unforeseen emergency situation."[98] Accordingly, Crimson cannot call its inability to secure its desired rates an "emergency" requiring the Commission to elide its normal ratemaking procedures.

The Crimson Utilities are also unlikely to prevail on the merits when a final rate is set. As shown above, in addition to being statutorily and regulatorily deficient, AL-27 incorporates several unsound O&M assumptions for the 2025 GRC and appears implausible in light of D.25-06-044. The sole support for AL-27 is the assertions of Mr. Waldron. However, "declaration[s] alone do[] not constitute evidence sufficient to persuade one that [they are] likely to prevail on the merits," and thus "to make a showing of likelihood to prevail on the merits," the Crimson Utilities must

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95 Ruling Denying Emergency Motion for Ex Parte Temporary Restraining Order and Order to Show Cause at 9, *CommPartners, LLC v. Pac. Bell Tel. Co.*, Docket No. C.08-01-007 (Feb. 9, 2010) (Chang, J.).

96 D.12-02-038 at 32-33, *San Pablo Bay Pipeline Co.* (2012) (citing *Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1180-81 (D.C. Cir. 1987)).

97 Commission's Rules of Practice and Procedure, Rule 14.6(a).

98 *Id.*

"put forth more than assertions."[99] For comparison, the emergency relief in D.01-01-018 was only granted after four days of hearing and two days of oral argument.[100] Indeed O-0098 rejected arguments by the Crimson Utilities that its likely success justified not requiring a letter of credit.[101] Emergency relief—even if possible—is therefore not justified here.

There is also no risk that the Crimson Utilities will suffer irreparable injury absent the interim increase. This alone would be grounds to deny emergency relief.[102] As described above, "[s]ection 455.3 authorizes the Commission to grant oil pipeline corporations the ability to retroactively collect the difference between the interim and authorized rates."[103] In fact, the Public Utilities Code *requires* the Commission to "determine the appropriateness of allowing retroactive charge and collection of subsequently-approved rate increases above 10 percent."[104] While the Crimson Utilities are not satisfied with the speed of the Commission's regulatory processes, complaining of "regulatory lag associated with retroactive recovery,"[105] their real grievance is with

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99 Ruling On Motion for Emergency Injunctive Relief at 6, *Fones4All Corp. v. Pac. Bell Tel. Co.*, Docket No. C.07-12-030 (Jan. 23, 2008) (Reed, J.) ("The declaration of Fones4All's Chief Financial Officer, Adam Larson, stated that the company 'is not in a position to pay AT&T California the $1,900,000 that AT&T claims is due' and repeated the allegations set forth in the complaint.").

100 D.01-04-008 at 3, *XO Cal., Inc. v. NorthPoint Commc'ns, Inc.* (2001).

101 O-0098 at 15 ("Crimson's argument that 'there is no plausible scenario' where a refund will be required relies on assumptions about the outcome of A.25-01-009, which cannot be prejudged by this resolution.").

102 Ruling Denying Emergency Motion at 2, *Bay Alarm Co. v. US TelePacific Corp.*, Docket No. C.06-07-015 (July 28, 2006) (Bemesderfer, J.) ("While I concur that Bay Alarm is likely to succeed on the merits because of the clear public policy in favor of customer choice of telecommunications service providers, I am going to deny the emergency motion because I do not believe that Bay Alarm has shown irreparable injury.").

103 Second Crimson IRR Ruling at 3.

104 Cal. Pub. Util. Code § 455.3(b)(5).

105 AL-47 at 8.

the state legislature. Crimson was already told previously "[i]n allowing retroactive charges, the Legislature addressed [these] equitable concerns."[106] Emergency interim relief is therefore not "the only solution that will allow the Crimson Utilities to continue operating the [Combined System] beyond the summer of 2025."[107]

The interim increase will also cause substantial harm to the Joint Protestants and other past shippers. These entities face an immediate 91.8 percent increase on rates for transportation services they already used, with an uncertain path to recovering refunds when a final rate is set. The Crimson Utilities claim that this relief will not impact consumers insofar as they allege it will "not translate into higher retail prices for gasoline or diesel for California consumers."[108] However, the Crimson Utilities admit that the additional revenue it seeks will be "directly taken out of the profits of the crude oil producers in California" because they are "the entit[ies] that bear[] the cost of crude oil transportation services."[109]

Contrary to Crimson Utilities' self-serving equitable theory, the California Assembly determined to protect ratepayers from unjust and unreasonable rates. As the Commission has found, "[e]ven large, sophisticated entities like the oil companies who ship refined petroleum products over [regulated pipelines] are entitled to the assurance of fair and reasonable rates, terms and conditions of service."[110] O-0098 again fails to meet the standard for emergency relief. Accordingly, O-0098's relief cannot be considered in the public interest, and it only serves to force

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106 Second Crimson IRR Ruling at 3.

107 AL-47 at 15.

108 *Id.* at 16.

109 *Id.*

110 D.07-05-061 at 27, *SFPP, L.P.* (2007).

shippers to potentially pay exorbitant rates higher than what the carrier has even asked for, while at the same time it must be recognized that no banks will extend credit to the carrier.[111]

E. Applying Interim Relief Retroactively Further Violates the Applicable Statutes and Exceeds the Commission's Authority

Even under the Commission's erroneous reading of the statute and regulations, the increase may only be effective after the date the Commission issued O-0098—February 6, 2026—and certainly not as of "August 1, 2025" as proposed in the Draft. Section 455.3 is clear that "[a]ny increase in the shipping rate charged by an oil pipeline corporation *prior to commission approval* shall not exceed 10 percent per 12-month period."[112] Here, any such Commission approval—even if it could be given on an interim basis—would be no earlier than February 5, 2026. And while the Commission has authority under Section 455.3 and Industry Rule 8.2 to award retroactive collections for pipelines, it may do so only after a final just and reasonable rate is set,[113] which O-0098 emphatically declares it does not do.[114]

As described above, there is no good public policy purpose served by requiring a one-time cash transfer from Northern California's embattled refiners and producers to a defunct oil pipeline going out of business because it is unable to operate at a rate that is useful or economical to anyone. Regardless of policy concerns, the governing statute and applicable regulations are directly in

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111 Crimson Utilities Comments on Draft Resolution at 2-3.

112 Cal. Pub. Util. Code § 455.3(b)(5) (emphasis added).

113 *See, e.g.*, D.25-06-044 at 44 ("Pub. Util. Code Section 455.3, subdivision (b)(5) allows the Commission to authorize retroactive charges and collection of the difference between a 10 percent interim rate increase *and the **final** approved rate increase*.") (emphasis added).

114 O-0098 at 11 ("We recognize that it may be uncommon for the Commission to grant emergency or *interim rate increases through resolution*. We note, however, that *the merits of Crimson's rate requests will be resolved in a formal proceeding, with opportunity for hearings on evidence presented, and that our authorization here is subject to refund* and additional protections specified below.") (emphasis added).

conflict with O-0098's findings and, even if such flaws are ignored, these same governing guidelines clearly limit the effect of O-0098 to only allowing this higher rate to be collected on movements from February 2026 forward. As described above, there will be *no such movements* as the Crimson Utilities discontinued their operations because it made itself economically obsolete. This moots the effectiveness of O-0098's proposal, further cautioning against the implementation of such a legally erroneous order.

Although Joint Protestant's raised this issue in comments to the DR, O-0098 does not address this clear defect whatsoever. The only mention of this issue is where O-0098 "acknowledge[s] the Joint Protestant's concern about [the] retroactive date," when justifying the requirement that the Crimson Utilities obtain a letter of credit.[115] But the Commission did not address how section 455.3 gives it the authority to backdate an interim rate increase above ten percent. Again, the Commission's actions are beyond its statutory authority, warranting reversal.

F. Resolution O-0098's Relief is Not Supported by Its Findings, Not Supported by the Substantial Evidence, and Constitutes an Abuse of Discretion

O-0098 is also defective because there is no "rational connection" between the interim rate increase and the issues facing the Combined System.[116] When the Combined System already has no shippers at $2.3571 per barrel, a 59.2 percent rate increase will clearly not provide any additional revenue that would allow the Crimson Utilities to maintain the lines. Instead, O-0098's only impact would be to burden already embattled Northern California refiners and San Joaquin Valley producers for no public purpose.

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115 *Id.* at 15.

116 *Securus Techs. v. Commission*, 88 Cal. App. 5th at 803 (quoting *Am. Bd. of Cosm. Surgery v. Med. Bd. of Cal.*, 162 Cal. App. 4th at 547-48).

O-0098 appears to arbitrarily accept the Crimson Utilities' bald representation that suspension of service on the Combined System will cause "disruptions in the production and refining of crude oil throughout the state."[117] However, the Combined System *already* ceased operations. Not because the Crimson Utilities made good on their oft-repeated[118] threats to cease operations if not given immediate rate relief. Rather, the Combined System ceased operations because it was unable to operate at sufficiently low rates to be economically efficient to use. This being the case, O-0098 would have no impact on going forward rates.

Despite Joint Protestant's comments on this issue in the DR, O-0098 does not explain how the interim rate increase will allow the Crimson Utilities to "maintain" the Combined System.[119] Instead, O-0098 simply "disagree[s] with Joint Protestant's assertion that . . . [the Combined System] has definitely permanently ceased operations" and alleges hypothetical scenarios that could lead to an increase in the supply or demand of crude.[120] But, as the Crimson Utilities themselves admit, "once volumes that have previously been transported to the Bay Area from San Joaquin Valley producers are rerouted south to Los Angeles refineries, they do not return."[121] O-0098 does not explain why *any shipper* would choose to ship on the Combined System at $3.7527 per barrel when *all shippers* have already found that it is uneconomical to ship at $2.3571 per barrel. Nor does the Commission's speculative fears of "alternative means of transportation" for oil justify this extra-statutory relief. Those alternative means of transportation are already being used *because* it is not cost-efficient to ship on the Combined System.

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117 O-0098 at 12.

118 *See* Section I.B., above.

119 O-0098 at 15.

120 *Id.* (quotation omitted).

121 AL-27 at 9.

O-0098 will have only two effects: (1) to increase the rates going forward (which no one will pay), and (2) to cause the Crimson Utilities' shippers to potentially make a one-time lump sum payment to the Crimson Utilities just as they are going out of business. Northern California's few remaining oil refiners and producers are already struggling to meet California's demand for refined products. Forcing them to pay millions of dollars for a service they no longer use will only make things worse. O-0098's failure to address these indisputable facts renders it reversibly unsound.

IV. CONCLUSION

WHEREFORE, Joint Protestants respectfully request that the Commission grant rehearing with respect to the issues in Resolution O-0098 identified herein and reverse and vacate the subject Resolution.

Respectfully submitted,

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