



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

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In the Matter of the Application of California Resources Production Corporation for a Certificate of Public Convenience and Necessity to Operate as a Gas Corporation in the State of California.

A.23-07-008  
(filed July 19, 2023)

**CALIFORNIA RESOURCES PRODUCTION CORPORATION'S  
APPLICATION FOR REHEARING OF DECISION 26-02-003**

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## TABLE OF CONTENTS

	<b>Page</b>
TABLE OF AUTHORITIES .....	iii
I. INTRODUCTION .....	1
II. FACTUAL AND PROCEDURAL BACKGROUND.....	3
III. ARGUMENT .....	6
A. The Decision Failed to Proceed in the Manner Required by Law by Erroneously Finding That CRPC Must Demonstrate Full Ownership of the Entire UI Pipeline. ....	6
1. The Decision Misinterprets Sections 216 and 222. ....	6
2. The Decision’s Efforts to Distinguish Commission Precedent Are Unavailing.....	9
B. The Decision Failed to Proceed in the Manner Required by Law by Concluding That the Application Is Unripe, and This Conclusion Is Not Supported by Substantial Evidence in the Record.....	13
1. Commission Action on the Application Is Not Barred by the Ripeness Doctrine. ....	13
2. The Commission Is Not Bound by Judicial Ripeness Restrictions.....	16
3. The Decision’s Cites Are Inapposite. ....	17
4. The Decision’s Dismissal of the Application as Unripe Disregards Eminent Domain as a Valid Legal Tool to Perfect Ownership of the Pipeline.....	19
C. The Commission Failed to Proceed in the Manner Required by Law by Disregarding Its Procedural Obligations in Adopting the Decision. ....	22
1. The Commission Violated the Scoping Memo, Its Procedural Rules, and Due Process.....	23
2. The Commission Adopted an Alternate Decision in Violation of Section 311.....	25
IV. REQUEST FOR ORAL ARGUMENT .....	28
V. CONCLUSION.....	28

## TABLE OF AUTHORITIES

Page(s)

### Cases

<i>California Water &amp; Telephone Co. v. Los Angeles County</i> (1967) 253 Cal.App.2d 16 .....	13
<i>Consumers Lobby Against Monopolies v. Public Utilities Commission</i> (1979) 25 Cal.3d 891 .....	16
<i>Golden State Water Co. v. Public Utilities Commission</i> (2024) 16 Cal.5th 380 .....	23
<i>Pacific Legal Foundation v. California Coastal Commission</i> (1982) 33 Cal.3d 158 .....	13, 15, 16
<i>People v. Western Air Lines, Co.</i> (1954) 42 Cal.2d 621 .....	24, 25
<i>Sale v. Railroad Commission</i> (1940) 15 Cal.2d 612 .....	16
<i>Shell California Pipeline Company v. City of Compton</i> (1995) 35 Cal.App.4th 1116 .....	20, 21
<i>Southern California Edison Co. v. Public Utilities Commission</i> (2006) 140 Cal.App.4th 1085 .....	25
<i>Stocks v. City of Irvine</i> (1981) 114 Cal.App.3d 520 .....	15
<i>Unocal California Pipeline Co. v. Conway</i> (1994) 23 Cal.App.4th 331 .....	20
<i>In re Wickland Pipelines LLC</i> (Dec. 16, 1999) .....	2, 9, 10, 12

### Decisions of the California Public Utilities Commission

D.97-06-091, <i>Application of Wild Goose Storage, Inc.</i> (1997) 73 CPUC 2d 90.....	8, 21
D.97-09-058, <i>Application of Women's Energy, Inc.</i> (1997) 75 CPUC 2d 624 .....	18
D.99-12-038, <i>Application of Wickland Pipelines LLC</i> (Dec. 16, 1999).....	8, 12

## TABLE OF AUTHORITIES

(continued)

	Page(s)
D.00-05-048, <i>Application of Lodi Gas Storage LLC for Certificate of Public Convenience and Necessity for Construction and Operation of Gas Storage Facilities</i> (May 18, 2000) .....	8, 21
D.01-11-071, <i>Application of Southern California Edison Company (U 338-E) for Authority to Lease Available Land on the West Lugo-Mira Loma 500 kV Transmission Right of Way to Chuka Foods, Inc.</i> (Nov. 29, 2001).....	27
D.02-07-036, <i>Application of Wild Goose Storage, Inc.</i> (July 17, 2002).....	21
D.02-11-023, <i>Application of Wickland Pipelines LLC for Authorization to Increase Membership Contributions and for Approval of Rates and Conditions of Service</i> (Nov. 7, 2002).....	12
D.04-10-039, <i>Order Instituting Investigation into Proposal of Sound Energy Solutions to Construct and Operate a Liquefied Natural Gas Terminal at Port of Long Beach</i> (Oct. 28, 2004).....	8, 16
D.07-12-047, <i>Application of WesPac Pipelines – Los Angeles LLC for Order Granting It Public Utility Status as Common Carrier Pipeline Corporation</i> (Dec. 21, 2007) .....	8, 9, 11
D.09-10-035, <i>Application of Gill Ranch Storage, LLC for Certificate of Public Convenience and Necessity for Construction and Operation of Natural Gas Storage Facilities</i> (Nov. 2, 2009) .....	8, 21
D.10-06-006, <i>Decision Dismissing Application Without Prejudice Due to Pendency of Federal Proceedings, Application of North County Communications Corporation of California (U5631C)</i> (June 7, 2010) .....	17
D.11-05-028, <i>In re WesPac Pipelines - Los Angeles LLC</i> (June 3, 2011).....	passim
D.11-07-036, <i>In re Application of Nevada Hydro Company for Certificate of Public Convenience and Necessity for Talega-Escondido/Valley-Serrano 500 kV Interconnect Project</i> (Aug. 5, 2011).....	7
D.11-12-056, <i>In re Application of Nevada Hydro Co. for Certificate of Public Convenience and Necessity for Talega- Escondi[d]o/Valley-Serrano 500 kV Interconnect Project</i> (Dec. 19, 2011) .....	7, 8, 16

**TABLE OF AUTHORITIES**  
(continued)

	<b>Page(s)</b>
D.13-07-048, <i>Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates (July 29, 2013)</i> .....	16
D.20-03-016, <i>Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local and Flexible Procurement Obligations for the 2019 and 2020 Compliance Years (March 16, 2020)</i> .....	27
D.21-09-047, <i>Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low-Income Customers of Investor-Owned Water Utilities, and Affordability (Sep. 23, 2021)</i> .....	27
 <b>Statutes</b>	
Pub. Util. Code, § 216.....	passim
Pub. Util. Code, § 216(a)(1).....	3
Pub. Util. Code, § 221.....	6, 7
Pub. Util. Code, § 222.....	passim
Pub. Util. Code, § 311.....	passim
Pub. Util. Code, § 311, subd. (e).....	2, 26, 28
Pub. Util. Code, § 1757, subd. (a)(2) .....	passim
Pub. Util. Code, § 1757, subd. (a)(3) .....	2, 13, 14, 19
Pub. Util. Code, § 1757, subd. (a)(6) .....	23, 25
 <b>California Public Utilities Commission Rules of Practice and Procedure</b>	
Rule 7.3 .....	23
Rule 14.1, subd. (d).....	27
Rule 16.1 .....	1
Rule 16.3 .....	28

**TABLE OF AUTHORITIES**  
(continued)

	<b>Page(s)</b>
Rule 16.3, subd. (a) .....	28
Rule 16.3, subd. (a)(1) .....	28
Rule 16.3, subd. (a)(3) .....	28
 <b>Other Authorities</b>	
California Bill Analysis of Sen. Bill No. 779, Assembly Floor (1997-1998 Reg. Sess.) Aug. 25, 1998 .....	28
California Law Revision Commission, General Information, <a href="https://clrc.ca.gov/">https://clrc.ca.gov/</a> (last visited Nov. 12, 2025).....	19
California Law Revision Commission, Tentative Recommendation, Condemnation by Privately Owned Public Utility 10-11 (Sept. 1998), <a href="https://clrc.ca.gov/pub/Misc-Report/TR-PubUtilCondemn.pdf">https://clrc.ca.gov/pub/Misc-Report/TR-PubUtilCondemn.pdf</a> .....	19, 20

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A.23-07-008  
(filed July 19, 2023)

**CALIFORNIA RESOURCES PRODUCTION CORPORATION'S  
APPLICATION FOR REHEARING OF DECISION 26-02-003**

California Resources Production Corporation (“CRPC”) submits this Application for Rehearing of Decision 26-02-003 (“Decision”) pursuant to California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, Rule 16.1.

**I. INTRODUCTION**

The Decision is the product of a flawed process that denied parties a meaningful opportunity to participate in the proceeding, in violation of the parties’ due process rights. This flawed process in turn resulted in a decision, which dramatically departs from decades of established Commission precedent, and misapplies controlling statutes and case law.

The original proposed decision, issued on October 17, 2025 (“Proposed Decision”), dismissed the application based upon issues that were outside the scope of the initial phase of this proceeding; the parties were therefore never given the opportunity to either introduce evidence or to brief those issues before the Proposed Decision issued.

Perhaps in large part due to the fact that the Proposed Decision was issued in the absence of either evidence or briefing, that Proposed Decision reached legal conclusions that were contrary to decades of established Commission precedent. The Proposed Decision further did not discuss or even acknowledge the existence of that precedent.

When those legal errors were identified in comments on the Proposed Decision, the Commission drastically re-wrote the Decision, changing the outcome from denial on the merits to dismissal based on a ripeness theory that neither the Commission nor any party had previously raised.

The result is a decision that has not proceeded in the manner required by law, is unsupported by substantial evidence, misapplies controlling statutes and precedent, and violates the due process due process rights afforded parties under the California and United States Constitutions. Rehearing is therefore warranted on the following grounds:

- **Misinterpretation of Sections 216 and 222.** The Decision’s premise that CRPC must presently own, control, operate, or manage the entire UI Pipeline to obtain a jurisdictional determination or CPCN contradicts the statutory text and decades of Commission precedent. (Pub. Util. Code, § 1757, subd. (a)(2).)
- **Departure from Controlling Precedent.** The Decision unlawfully disregards *WesPac* and *Wickland*, which hold that an applicant’s intent and demonstrated plan to acquire and operate utility assets suffice for public utility status. The Decision’s attempts to distinguish those cases misstate their records and legal holdings and constitute clear legal error. (Pub. Util. Code, § 1757, subd. (a)(2).)
- **Erroneous Ripeness Dismissal.** The ripeness rationale is legally misplaced and unsupported by substantial evidence in the record. The Application presents a live, concrete dispute with immediate legal consequences, and any local franchise or ownership uncertainties in the Cities do not bar a jurisdictional determination. (Pub. Util. Code, § 1757, subd. (a)(2), (3).)
- **Failure to Recognize Eminent Domain as a Lawful Path to Perfect Ownership.** The Decision improperly ignores that a jurisdictional determination would confer eminent domain authority enabling CRPC to perfect ownership of the UI Pipeline notwithstanding the parallel judicial and administrative proceedings. This is precisely the statewide function eminent domain serves for critical utility infrastructure and ignoring this avenue for CRPC to perfect ownership of the UI Pipeline is a legal error. (Pub. Util. Code, § 1757, subd. (a)(2).)
- **Violation of the Scoping Memo and Commission Rules.** The Commission failed to proceed in the manner required by law by dismissing the Application on an unscoped ripeness theory and bypassing the phased process it created in the Scoping Memo. (Pub. Util. Code, § 1757, subd. (a)(2).)
- **Due Process Violation.** By introducing a new ripeness theory in a revised decision served two days before the vote and adopting it without comment, the Commission also deprived the parties of adequate notice and a meaningful opportunity to respond, resulting in prejudicial violation of due process. (Pub. Util. Code, § 1757, subd. (a)(6).)
- **Section 311 Violation.** The Commission adopted a substantively different Revised Proposed Decision—introducing a new dispositive ripeness theory and altering the outcome—without the public review and comment that Section 311, subdivision (e) requires for alternate decisions. (Pub. Util. Code, § 1757, subd. (a)(2).)

## II. FACTUAL AND PROCEDURAL BACKGROUND

CRPC filed Application (“A.”) 23-07-008 (“Application”) on July 19 2023, seeking (1) designation as a public utility gas corporation under Sections 216 and 222; and (2) a Certificate of Public Convenience and Necessity (“CPCN”) pursuant to Section 1001 to operate the Union Island Pipeline (“UI Pipeline”) as a public utility asset in California. The UI Pipeline is an existing approximately 35-mile natural gas pipeline extending from the Union Island Gas field in western San Joaquin County to the Los Medanos meter station east of Pittsburg, California, which is owned by Chevron Pipeline Company.<sup>1</sup> The UI Pipeline passes through unincorporated areas of San Joaquin and Alameda Counties, and through the Cities of Antioch and Brentwood (collectively, the “Cities”). CRPC formerly held franchise agreements with the Cities, but when those franchise agreements expired, CRPC sought to retain operation of this critical gas pipeline through dedication to public utility service (and potentially, the exercise of eminent domain).

The Cities jointly protested the Application.<sup>2</sup> The Public Advocates Office, Indicated Shippers (representing the natural gas non-core customer interests of Chevron U.S.A. Inc., Marathon Petroleum, and PBF Holding Company), and Pacific Gas & Electric were granted party status.<sup>3</sup>

On November 6, 2023, Assigned Commissioner Douglas issued a Scoping Memo and Ruling (“Scoping Memo”).<sup>4</sup> The Scoping Memo identified an initial “threshold issue”: whether CRPC is a public utility, and further directed parties to brief three questions related to that threshold issue:<sup>5</sup>

- 1) Is C[RP]C conducting business in a manner and/or holding itself out to the public as a “public utility,” as defined by Section 216(a)(1) and cases interpreting the statute?

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<sup>1</sup> Application of California Resources Production Corporation for a Certificate of Public Convenience and Necessity to Operate as a Gas Corporation in the State of California (July 19, 2023) (“Application”), at p. 2.

<sup>2</sup> Decision, at p. 15; Joint Protest of the City of Antioch and the City of Brentwood to California Resources Production Corporation’s Application for a Certificate of Public Convenience and Necessity to Operate as a Gas Corporation in the State of California (Aug. 22, 2023) (“Cities Joint Protest”), at pp. 11–14.

<sup>3</sup> Decision, at p. 16.

<sup>4</sup> Decision, at p. 16; Assigned Commissioner’s Scoping Memo and Ruling (Nov. 6, 2023) (“Scoping Memo”).

<sup>5</sup> Scoping Memo, at p. 4.

- 2) Is C[RP]C operating a gathering pipeline? If so, does the Commission lack jurisdiction over C[RP]C on that basis?
- 3) Is C[RP]C infringing upon PG&E's exclusive service territory?

The Scoping Memo reserved additional matters for subsequent consideration depending on how the threshold issue was resolved, including the issue of “[w]hether CRPC qualifies as a public utility gas corporation entitled to a CPCN when the franchise agreements permitting it to run the UI Pipeline through the Cities have expired and both Cities have declined to renew the franchises.”<sup>6</sup> The Scoping Memo contemplated that resolution of any subsequent issues, including issues associated with the expired franchise agreement, would potentially involve testimony and evidentiary hearings, as well as additional briefing on those issues.<sup>7</sup> The Scoping Memo made clear that the Assigned Commissioner intended to revisit the schedule for the proceeding and the scoped issues after the Commission’s resolution of the threshold issue.<sup>8</sup>

On December 6, 2023, CRPC, the Cities, Indicated Shippers, and PG&E filed opening briefs on the threshold issue and questions.<sup>9</sup> On December 21, 2023, CRPC, the Cities, Indicated Shippers, and PG&E filed reply briefs on the threshold issue and questions.<sup>10</sup>

The Commission issued the Proposed Decision in this proceeding on October 17, 2025, almost two years after the date briefing on the threshold issue was completed.<sup>11</sup> The Proposed Decision denied the Application on the merits.<sup>12</sup> The Proposed Decision concluded that “CRPC is neither a public utility under Section 216, nor a gas corporation under Section 222, and therefore is ineligible for a CPCN under Section 1001(a).”<sup>13</sup> Specifically, the Proposed Decision found that CRPC did not meet its burden of establishing that it is a “gas corporation” under Section 222 because it did not establish itself as “owning, controlling, operating, or managing” the *full* UI Pipeline as a gas plant at present or that it may do so in the reasonably near future.<sup>14</sup>

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<sup>6</sup> Scoping Memo, at pp. 4–5.

<sup>7</sup> Scoping Memo, at p. 5.

<sup>8</sup> Scoping Memo, at p. 5–6.

<sup>9</sup> Decision, at p. 16.

<sup>10</sup> Decision, at p. 16.

<sup>11</sup> Decision, at p. 20.

<sup>12</sup> Proposed Decision, at p. 3.

<sup>13</sup> Proposed Decision, at p. 26.

<sup>14</sup> Proposed Decision, at p. 19 (italics and bolding omitted).

On November 6, 2025, CRPC and Indicated Shippers filed comments on the Proposed Decision.<sup>15</sup> CRPC and the Cities filed reply comments on November 12, 2025.<sup>16</sup> Comments conclusively demonstrated that the reasoning of the Proposed Decision—regarding present ownership—were flawed and inconsistent with established Commission precedent.

After holding the October 17, 2025 Proposed Decision for months, on February 3, 2026, two days before the Commission’s scheduled February 5 voting meeting on which the Proposed Decision now appeared, the Commission served a Revised Proposed Decision on the parties. On February 5, 2026, the Commission approved the Revised Proposed Decision. On February 11, 2026, the Commission issued the Decision (D.26-02-003).

The adopted Decision marked a stark departure from both the Proposed Decision and the phased structure established in the Scoping Memo. The adopted Decision fundamentally changed the outcome by converting the denial into a dismissal without prejudice.<sup>17</sup> To accomplish this shift, the Decision introduced a new legal theory: that the Application is not ripe for adjudication.<sup>18</sup> Ripeness was not scoped as an issue in the Scoping Memo, nor was it briefed by the parties as a dispositive ground for dismissal.

Significantly, the Decision also retreated from the Proposed Decision’s factual conclusions. Rather than determining that CRPC lacked sufficient ownership, management, operation, and control of the UI Pipeline, the Commission concluded that it was “premature” to make a jurisdictional determination because of ongoing litigation concerning the expired franchise agreements with the Cities and the Cities’ franchise proceedings.<sup>19</sup> The Decision explained: “CRPC’s Application is premature and dismissed without prejudice as unripe. We cannot now determine whether CRPC is presently a public utility under Section 216, or a gas corporation under Section 222. CRPC therefore is ineligible for a CPCN under Section 1001(a) at this time.”<sup>20</sup> The Decision thus dismissed the proceeding without prejudice on grounds that were expressly excluded from the scope of the proceeding, without the benefit of either evidence

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<sup>15</sup> Decision, at p. 20.

<sup>16</sup> *Ibid.*

<sup>17</sup> Decision, at p. 2.

<sup>18</sup> Decision, at pp. 22–25.

<sup>19</sup> Decision, at p. 22.

<sup>20</sup> Decision, at p. 35.

or briefing by any party, and without citing existing Commission precedent that is inconsistent with the outcome set forth in the Decision.

### III. ARGUMENT

#### A. **The Decision Failed to Proceed in the Manner Required by Law by Erroneously Finding That CRPC Must Demonstrate Full Ownership of the Entire UI Pipeline.**

The Decision states that it cannot resolve the scoped threshold issue under Sections 216 and 222 “without final determinations of CRPC’s underlying rights that are pending decision in parallel judicial and local administrative proceedings.”<sup>21</sup> This conclusion rests on the fundamentally incorrect premise that CRPC must demonstrate present ownership, control, operation, or management of the entire UI Pipeline before the Commission may make a jurisdictional determination or issue a CPCN. The Decision asserts that both statutes contain “unambiguous present tense language” and therefore permit “neither past (*i.e.*, expired) status nor uncertain future (*i.e.*, speculative) status to satisfy their criteria.”<sup>22</sup> This reading departs from the statutory text, contradicts decades of Commission precedent, and produces an “absurd result” the Commission has expressly rejected in prior decisions.

##### 1. **The Decision Misinterprets Sections 216 and 222.**

The Decision’s dismissal of the Application is predicated upon a gross misinterpretation of Sections 216 and 222.<sup>23</sup>

The Decision’s claimed inability to rule on the Application is the product of an absurd and previously rejected construction of Sections 216 and 222—not any legitimate ripeness concern. Sections 216 and 222 do not impose a requirement that an applicant must *presently* own, control, operate, or manage the *entire* utility facility before the Commission may determine public utility status or issue a CPCN. As noted by the Decision, Section 222 defines “gas corporation,” in part, to include “every corporation or person *owning, controlling, operating, or managing* any gas plant for compensation within this state.”<sup>24</sup> Section 221 defines “[g]as plant” to include “all real estate, fixtures, and personal property, *owned, controlled, operated, or*

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<sup>21</sup> Decision, at p. 25.

<sup>22</sup> Decision, at p. 24.

<sup>23</sup> Pub. Util. Code, § 1757, subd. (a)(2).

<sup>24</sup> Decision, at p. 26 (emphasis in original) (quoting Pub. Util. Code, § 222).

*managed* in connection with ... [the] transmission ... of gas.”<sup>25</sup> The Decision contends that to qualify as a “gas corporation,” CRPC must “establish itself as *presently* owning, controlling, operating, or managing ‘gas plant,’ *i.e.*, the full UI Pipeline at this time.”<sup>26</sup>

In D.11-12-056,<sup>27</sup> however, the Commission expressly rejected the very statutory interpretation argument that the Decision relies upon—that the statutory language is present tense, and thus reflects a requirement that a putative public utility must *presently* own, control, operate or manage the gas plant—and that prospective *future* ownership, control, operation, *or*<sup>28</sup> management is insufficient. In D.11-12-056, the Commission addressed an application for rehearing of D.11-07-036<sup>29</sup> filed by San Diego Gas and Electric Company (“SDG&E”), issued in Nevada Hydro Company’s application A.10-07-001, which sought a CPCN to construct and operate the Talega-Escondido/Valley-Serrano 500 kV Interconnect Project. D.11-07-036 addressed certain “threshold issues” in that proceeding, including concluding that once Nevada Hydro was granted a CPCN, it would become a public utility pursuant to Sections 216 (defining “public utility”) and 218 (defining “electrical corporation”).<sup>30</sup>

SDG&E filed an application for rehearing, challenging, among other things, the finding that Nevada Hydro would be a public utility once it obtained a CPCN. SDG&E’s reasoning was identical to the reasoning asserted in the Decision:

To support its position, SDG&E argues that the statutes are phrased using an active, *present verb tense*. In SDG&E’s view, the plain language thus shows it is impermissible to consider and/or determine public utility status until Nevada Hydro’s *present* actions satisfy the statutory requirements. SDG&E argues that

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<sup>25</sup> Pub. Util. Code, § 221 (emphasis added).

<sup>26</sup> Decision, at p. 27 (first italics added).

<sup>27</sup> D.11-12-056, *In re Application of Nevada Hydro Co. for Certificate of Public Convenience and Necessity for Talega- Escondi[d]o/Valley-Serrano 500 kV Interconnect Project* (Dec. 19, 2011).

<sup>28</sup> The Commission is also mistaken that CRPC must demonstrate ownership, control, operation, or management of the *entire UI Pipeline*. The relevant statutory language in Section 222 defines “gas corporation” as any entity “owning, controlling, operating, *or* managing any gas plant for compensation.” (Pub. Util. Code, § 222 (emphasis added).) This language is disjunctive, meaning that CRPC *may satisfy only one of the four listed elements* to meet the statutory definition. (See Reply Comments of California Resources Production Corporation on the October 17, 2025 Proposed Decision of Administrative Law Judge Lee (Nov. 11, 2025), at p. 3.)

<sup>29</sup> D.11-07-036, *In re Application of Nevada Hydro Company for Certificate of Public Convenience and Necessity for Talega-Escondido/Valley-Serrano 500 kV Interconnect Project* (Aug. 5, 2011)

<sup>30</sup> See *id.* at p. 19, Ordering Paragraph No. 1.

nothing in the statutes allow for consideration based on *future* facts not yet in existence.<sup>31</sup>

The Commission adamantly rejected SDG&E's (and the Decision's) interpretation:

Common sense and practicality would dictate that when, as here, an application is filed showing an entity would act to fulfill the statutory criteria if the desired approval is granted, it is only reasonable to consider the facts presented and put the parties on notice whether the statutes would be triggered.... SDG&E's attempt to constrain this Commission's ability to render such a determination based on a literal application of verb tense *would produce an **absurd result** that frustrates our ability to effectuate the spirit, purpose, and intent of the statutes.*<sup>32</sup>

As D.11-12-056 also notes that the Commission “regularly grants [CPCNs] to public utilities seeking to operate in California,” based upon projected future ownership, control, operation or management, including future operations, as here, that were premised upon the exercise of eminent domain authority afforded by public utility status. These designations have commonly occurred in the context of the natural gas industry—the Commission granted a number of CPCNs to independent storage providers (“ISPs”) based upon *prospective* operation of gas storage facilities, including facilities that required the exercise of eminent domain.<sup>33</sup> Thus, the Decision flies in the face not only of the Commission's prior decision expressly rejecting the Decision's reasoning, but also a long and unbroken history of granting CPCNs and public utility status in just these types of circumstances.

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<sup>31</sup> D.11-12-056 at p. 4 (first and third emphases added, second emphasis in original).

<sup>32</sup> *Id.* at p. 6 (emphasis added) (footnotes omitted).

<sup>33</sup> See D.09-10-035, *Application of Gill Ranch Storage, LLC for Certificate of Public Convenience and Necessity for Construction and Operation of Natural Gas Storage Facilities* (Nov. 2, 2009) (noting that the designation would provide eminent domain authority to Gill Ranch Storage); D.00-05-048, *Application of Lodi Gas Storage LLC for Certificate of Public Convenience and Necessity for Construction and Operation of Gas Storage Facilities* (May 18, 2000); D.04-10-039, *Order Instituting Investigation into Proposal of Sound Energy Solutions to Construct and Operate a Liquefied Natural Gas Terminal at Port of Long Beach* (Oct. 28, 2004); D.97-06-091, *Application of Wild Goose Storage, Inc.* (1997) 73 CPUC 2d 90. These designations have also repeatedly occurred in other contexts, including for refined petroleum product pipelines: D.07-12-047, *Application of WesPac Pipelines – Los Angeles LLC for Order Granting It Public Utility Status as Common Carrier Pipeline Corporation* (Dec. 21, 2007) (“*WesPac Decision*”); D.99-12-038, *Application of Wickland Pipelines LLC* (Dec. 16, 1999) (“*Wickland Decision*”).

If the Commission’s interpretation of Sections 216 and 222 is left to stand, it would upend decades of Commission practice and create an “absurd result” D.11-12-056 warned against. The Decision’s interpretation would drastically limit the Commission’s future ability to address entities seeking to offer new utility services to the public. No longer could a new entity seek to obtain a CPCN to provide future public utility services, as the right to file such applications would only accrue to existing public utilities *presently* operating such assets. Entities developing critical infrastructure, including technologies potentially essential to achieving California’s climate change goals, could not pursue public utility status, nor exercise the eminent domain rights necessary to establish those technologies. Transformative utility services, such as independent gas storage providers, would no longer be a possibility.

The Decision’s reading of Sections 216 and 222 conflicts with the statutory language, contradicts Commission precedent rejecting its statutory interpretation, and yields untenable and absurd consequences. These flaws were expressly identified in the comments submitted by CRPC on the Proposed Decision. Yet despite identifying the extensive precedent contrary to the Commission’s Decision here, the Commission’s Revised Proposed Decision simply ignored this dispositive precedent—failing even to cite to or attempt to distinguish the relevant decisions. Because the Decision rests on these legal errors, rehearing is required.<sup>34</sup>

**2. The Decision’s Efforts to Distinguish Commission Precedent Are Unavailing.**

As explained above, there is a long, unbroken line of Commission decisions that support granting CRPC public utility status based upon present ownership of the UI Pipeline, and its future intent to maintain operation of the UI Pipeline through the exercise of eminent domain. Nor do the two decisions cited in the Decision—D.99-12-038, *In re Wickland Pipelines LLC* (Dec. 16, 1999) (“*Wickland Decision*”) and D.07-12-047 (“*WesPac Decision*”)—support the idea that present ownership is required for public utility status.

In the *Wickland Decision*, cited in CRPC’s Application,<sup>35</sup> the Commission addressed an application by Wickland Pipelines LLC requesting a finding that it was a public utility pipeline corporation based upon its intention to construct, own, and operate a jet fuel pipeline to supply Sacramento International Airport. The *Wickland Decision* notes that “Wickland currently does

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<sup>34</sup> Pub. Util. Code, § 1757, subd. (a)(2).

<sup>35</sup> Application, at p. 8.

not own any tangible facilities,” though “[i]t proposes to do so in the future....”<sup>36</sup> The Commission found that Wickland’s *future* intention to operate a public utility pipeline was sufficient to find that Wickland was a public utility pipeline corporation.

Additionally, CRPC cited the *WesPac* Decision in support of its request for a determination that it satisfies the statutory criteria for public utility status.<sup>37</sup> In the *WesPac* Decision, the Commission issued an interim opinion granting public utility status to WesPac Pipelines, which proposed to construct a 24-inch jet fuel pipeline in Los Angeles County.<sup>38</sup> The Commission, citing the *Wickland* Decision, held: “Although WesPac appears to have no assets dedicated to public use at this time, we have previously declared under very similar circumstances that an applicant’s intention to acquire a pipeline and operate it as a common carrier was sufficient to satisfy the requirement of present ownership and control....”<sup>39</sup> The *WesPac* Decision therefore squarely establishes that an applicant’s intent to acquire and operate a public utility asset is enough to confer public utility status.

The Decision goes to great lengths, devoting four pages, to attempt to distinguish the *WesPac* Decision. None of these arguments are availing. Recognizing that the *WesPac* decision cited in CRPC’s Application is inconsistent with the legal standard it applies, the Decision attempts to distinguish that decision on two bases: (1) that the *WesPac* Decision involved a construction project that “was unopposed and progressing through the ordinary course of environmental review,”<sup>40</sup> and (2) that the *WesPac* Decision was an *interim* decision, unlike the decision sought by CRPC.<sup>41</sup> Neither representation is accurate or supported by the record of that proceeding.

Contrary to the representations in the Decision, the jet fuel pipeline proposed in the *WesPac* Decision was vigorously opposed. The City of Gardena actively opposed the proposed jet fuel pipeline during environmental review, including filing an action in Los Angeles Superior Court challenging the Final Environmental Impact Report.<sup>42</sup> And, while WesPac had been in the

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<sup>36</sup> *Wickland* Decision, at p. 2.

<sup>37</sup> Decision, at p. 30; Application, at p. 9.

<sup>38</sup> *WesPac* Decision, at pp. 1–2.

<sup>39</sup> *Id.* at p. 2, citing D.99-12-038.

<sup>40</sup> Decision, at p. 31.

<sup>41</sup> *Ibid.*

<sup>42</sup> Revised Scoping Memo and Ruling, at p. 3, *Application of WesPac Pipelines – Los Angeles LLC for Order Granting It Public Utility Status as Common Carrier Pipeline Corporation*

process of attempting to negotiate franchise agreements with the City of Los Angeles, the County of Los Angeles, and the City of Carson, negotiations were stalled as a result of the City of Gardena’s lawsuit.<sup>43</sup> The City of Gardena’s legal challenge eventually resulted in the WesPac pipeline being put on hold and WesPac dismissing its application over four years after it was filed.<sup>44</sup> Hardly the “unopposed construction project” the Decision claims.

The Decision also mischaracterizes the “interim” nature of the *WesPac* Decision. The term “interim” in the *WesPac* Decision does not refer to an “interim, conditional [public utility] designation,”<sup>45</sup> as the Decision claims. The public utility designation adopted in D.07-12-047 was intended to be permanent, and in fact, the Commission kept the public utility designation in place even as it dismissed the remainder of the application in D.11-05-028 due to the significant project delays resulting from the pending litigation.<sup>46</sup> Instead, the term interim merely refers to the fact that the public utility designation was not intended to be the final decision in the proceeding. As explained in the Revised Scoping Memo and Ruling, “WesPac asked the Commission to issue an initial interim order to establish that ... it is a public utility, and then to issue a final order authorizing it to file a tariff with the Commission for market-based rates...”<sup>47</sup> This is exactly what was contemplated in this proceeding—an interim decision addressing various threshold questions related to public utility status, and then a decision on the remaining issues, including, as in *WesPac*, a resolution of CRPC’s request for market-based rates.<sup>48</sup>

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(A.07-04-003) (Dec. 1, 2009) (“Revised Scoping Memo and Ruling in A.07-04-007 (WesPac Application)”).

<sup>43</sup> *Id.* at p. 4.

<sup>44</sup> D.11-05-028, *In re WesPac Pipelines - Los Angeles LLC* (June 3, 2011).

<sup>45</sup> Decision, at p. 33.

<sup>46</sup> D.11-05-028, at p. 2 (noting that “WesPac has filed a written request that this proceeding be dismissed, *with confirmation of our interim order*.... Accordingly, we will dismiss the application without prejudice. WesPac may, at some future date, file a new application requesting resolution of issues that are not *res judicata* under D.07-12-047 [i.e., public utility status].”). This confirmation of WesPac’s public utility status occurred before construction had begun on the jet fuel pipeline. *Id.* at pp. 1-2.

<sup>47</sup> Revised Scoping Memo and Ruling in A.07-04-007 (WesPac Application), at p. 2.

<sup>48</sup> It is worth noting that, regardless of whether CRPC expressly requested it or not, the Commission obviously has the authority to condition any public utility designation as it sees fit within the bounds of its jurisdiction and statutory authority—that is part and parcel of its authority to address CRPC’s request. But the appropriate approach would be for the Commission to impose conditions on the designation, not deny it entirely.

The Decision similarly attempts to distinguish the *Wickland* Decision on the same ground, arguing that the determination of public utility status was only “interim,” and that the application was granted in a subsequent decision, D.02-11-023.<sup>49, 50</sup> That claim is incorrect. Even a cursory review of D.02-11-023 reveals it does not address public utility status, which was granted in the original decision, D.99-12-038. D.02-11-023 addresses other issues raised in an amended application, including (as here) market-based rate authority. However, even were the Decision correct that D.02-11-023 granted “final” public utility status, Wickland had yet to acquire the real property interests necessary to construct the jet fuel pipeline, let alone begin construction, at the time D.02-11-023 was issued.<sup>51</sup> Thus, what the Decision characterizes as the “final decision” could only have relied upon Wickland’s *future* ownership, control, operation or management of the jet fuel pipeline.

Finally, the Decision’s attempt to distinguish *WesPac* and *Wickland* lacks any logical coherence. If, as the Decision contends, Sections 216 and 222 require *present* ownership, control, management or operation of gas plant, the fact that an application is not contested, or that the decision is only issued on an interim basis, would not somehow permit the Commission to ignore the text of those statutes. Thus, the factual distinctions the Decision claims to identify between this matter and the *WesPac* and *Wickland* Decisions not only do not exist, they provide no basis to ignore the Decision’s claimed statutory requirements. Nor does anything in *WesPac* or *Wickland* support the idea that those decisions are exceptions to the rule, as opposed to yet another application of a long-standing Commission practice of determining public utility status based upon *future* ownership, control, management or operation of gas plant.

The Decision’s attempts to distinguish *WesPac* and *Wickland* misrepresent the record and the decisions in those proceedings resulting in legal error.<sup>52</sup>

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<sup>49</sup> D.02-11-023, *Application of Wickland Pipelines LLC for Authorization to Increase Membership Contributions and for Approval of Rates and Conditions of Service* (Nov. 7, 2002).

<sup>50</sup> Decision, at p. 32, fn. 63.

<sup>51</sup> D.02-11-023, at pp. 2, 13.

<sup>52</sup> Pub. Util. Code, § 1757, subd. (a)(2).

**B. The Decision Failed to Proceed in the Manner Required by Law by Concluding That the Application Is Unripe, and This Conclusion Is Not Supported by Substantial Evidence in the Record**

The Decision’s conclusion that the Application is unripe reflects a failure to proceed in the manner required by law and rests on findings that are not supported by substantial evidence.<sup>53</sup> Ripeness is a narrow justiciability concept, and the Decision applies it in a way that is both legally incorrect and inconsistent with the Commission’s own authority and practices. The record presents a concrete, fully developed dispute appropriate for Commission action, and the Commission’s refusal to decide the Application creates unnecessary uncertainty with significant operational and policy consequences. The Decision’s reliance on the ripeness doctrine is also legal error because it overlooks that eminent domain is a valid legal tool available to CRPC, should it obtain public utility status, to perfect ownership of the UI Pipeline.

**1. Commission Action on the Application Is Not Barred by the Ripeness Doctrine.**

Ripeness is a justiciability doctrine aimed at preventing courts from issuing purely advisory opinions.<sup>54</sup> A matter is “ripe” when it has “reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made.”<sup>55</sup> To determine if a controversy is ripe, courts employ a two-pronged test: (1) whether the dispute is sufficiently concrete to make declaratory relief appropriate; and (2) whether withholding judicial consideration will result in the parties suffering hardship.<sup>56</sup> The Decision invokes this framework, asserting that “[w]here an application requests authority for a hypothetical activity, a decision issued by the Commission would constitute a prohibited advisory opinion.”<sup>57</sup>

CRPC’s Application is not hypothetical and presents a live, concrete controversy that the Commission can decide now. A Commission ruling on the merits would have immediate legal consequences. Granting CRPC a CPCN would determine CRPC’s legal status as a public utility gas corporation and immediately confer statutory powers associated with that status. As a public utility, CRPC could seek to condemn property to preserve its ownership, control, and

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<sup>53</sup> Pub. Util. Code, § 1757, subd. (a)(2), (3).

<sup>54</sup> *Pacific Legal Foundation v. California Coastal Commission* (1982) 33 Cal.3d 158, 170.

<sup>55</sup> *California Water & Telephone Co. v. Los Angeles County* (1967) 253 Cal.App.2d 16, 22.

<sup>56</sup> *Pacific Legal Foundation, supra*, 33 Cal.3d at pp. 172–173.

<sup>57</sup> Decision, at p. 23.

management of the UI Pipeline.<sup>58</sup> Thus, Commission action here would have actual—not hypothetical—legal effects.

The factual context is also sufficiently developed to allow the Commission to determine CRPC’s status as a gas corporation. The Decision’s findings otherwise are not supported by substantial evidence in the record.<sup>59</sup> The Decision’s ripeness theory rests on several incorrect legal premises. The Decision assumes CRPC must “establish itself as presently owning, controlling, operating, or managing a ‘gas plant,’ i.e., the *full* UI Pipeline,” before the Commission may determine public utility status.<sup>60</sup> But, as explained above, there is no statutory requirement than an applicant presently own or operate the *entire* facility to qualify as a gas corporation.<sup>61</sup> Nor does the statute require *present* ownership, control, operation, or management; evidence of *prospective* ownership, control, operation, or management authority is sufficient to establish public utility status for purposes of a CPCN.<sup>62</sup>

The Decision acknowledges that CRPC presently holds franchise agreements with both San Joaquin County and Contra Costa County to operate and maintain the UI Pipeline in unincorporated areas within those counties.<sup>63</sup> The Decision also recognizes that CRPC’s corporate assets include ownership interests in the UI Pipeline.<sup>64</sup> The only uncertainties the Decision identifies concern local operating rights inside two cities, Antioch and Brentwood.<sup>65</sup> Resolving these uncertainties is not needed to grant the CPCN. The Commission routinely grants CPCNs where local permitting or access issues remain outstanding, treating those matters as conditions to be addressed in implementation—not as obstacles to establishing public utility status.<sup>66</sup> The underlying facts here are therefore “sufficiently concrete” to support a determination that CRPC is a public utility gas corporation and to warrant granting a CPCN for

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<sup>58</sup> See Opening Comments of California Resources Production Corporation on the October 17, 2025 Proposed Decision of Administrative Law Judge Lee (Nov. 6, 2025) (“CRPC’s Opening Comments on the Proposed Decision”), at p. 13.

<sup>59</sup> Pub. Util. Code, § 1757, subd. (a)(3).

<sup>60</sup> Decision, at p. 27 (emphasis added).

<sup>61</sup> CRPC’s Opening Comments on the Proposed Decision, at pp. 4–7.

<sup>62</sup> *Ibid.*

<sup>63</sup> Decision, at p. 10.

<sup>64</sup> Decision, at p. 9.

<sup>65</sup> See Decision, at p. 28.

<sup>66</sup> CRPC’s Opening Comments on the Proposed Decision, at pp. 4–7.

the UI Pipeline. The unresolved issues within Antioch and Brentwood are not legal barriers to granting a CPCN and do not render the matter unripe.

The hardships present here strongly favor resolving the Application rather than relying on the ripeness doctrine to avoid a decision. The California Supreme Court has cautioned that the ripeness doctrine “should not prevent courts from resolving concrete disputes if the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer to a particular legal question.”<sup>67</sup> The Decision itself recognizes that parallel litigation and local processes “may continue *indefinitely*,” which only heightens the hardship of withholding a decision.<sup>68</sup>

By declining to decide the Application, the Commission leaves the status of a critical existing in-state gas pipeline uncertain.<sup>69</sup> That uncertainty is particularly troubling given the substantial public interest in ensuring the UI Pipeline’s continued operation. The UI Pipeline provides a critical pathway to market natural gas produced at the Union Island Gas, French Camp Gas, and Lathrop Gas fields in western San Joaquin County and the Brentwood field in Contra Costa County.<sup>70</sup> Using the UI Pipeline to deliver locally produced gas results in lower greenhouse-gas emissions than importing out-of-state gas or relying on higher-emitting alternative transport modes.<sup>71</sup> Continued use of the UI Pipeline also helps sustain in-state refineries, including Chevron’s Richmond Refinery, at a time when the state has already experienced several refinery closures.<sup>72</sup> In light of these considerations, prolonging this uncertainty would impose undue hardship on CRPC, undermine important state energy and environmental objectives, and therefore weighs in favor of the Commission issuing a decision rather than invoking ripeness.

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<sup>67</sup> *Pacific Legal Foundation, supra*, 33 Cal.3d at p. 170, citing *Stocks v. City of Irvine* (1981) 114 Cal.App.3d 520, 533.

<sup>68</sup> Decision, at p. 32 (emphasis added).

<sup>69</sup> See Reply Comments of California Resources Production Corporation on the October 17, 2025 Proposed Decision of Administrative Law Judge Lee (Nov. 12, 2025) (“CRPC’s Reply Comments on the Proposed Decision”), at pp. 4–5; Indicated Shippers Opening Comments on Commission’s Proposed Decision Denying Application (Nov. 6, 2025) (“Indicated Shippers Opening Comments on the Proposed Decision”), at pp. 11–14.

<sup>70</sup> CRPC’s Reply Comments on the Proposed Decision, at pp. 4–5.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

## 2. The Commission Is Not Bound by Judicial Ripeness Restrictions.

Even if the ripeness doctrine applies here—it does not—the Commission is not bound by it. Ripeness is a judicially created doctrine, and the Commission has long recognized that it operates differently from courts in several critical respects.<sup>73</sup> The Commission has observed: “[W]hile a court’s function is primarily dispute resolution [citation], our functions include legislation and permitting.”<sup>74</sup> Therefore, “advisory actions which are disfavored in courts may well be appropriate in Commission proceedings.”<sup>75</sup> Indeed, in the primary ripeness case cited in the Decision, *Pacific Legal Foundation*, the agency in question had already ruled on issues that were found to be unripe for judicial review.<sup>76</sup>

A jurisdictional determination is precisely the kind of Commission function that may warrant action even when some facts remain unresolved. Determining whether an entity is a public utility and whether a CPCN should issue are statutory responsibilities that often require prospective or forward-looking assessment.<sup>77</sup> The Commission regularly grants CPCNs to public utilities seeking to operate in California based upon projected future ownership, control, operation, or management.<sup>78</sup> The Commission is not constrained from deciding such matters simply because a court might decline to do so on ripeness grounds, and errs in failing to exercise its authority here.

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<sup>73</sup> *Consumers Lobby Against Monopolies v. Public Utilities Commission* (1979) 25 Cal.3d 891, 906 (recognizing the Commission is not a judicial tribunal); *Sale v. Railroad Commission* (1940) 15 Cal.2d 612, 617 (noting that while a court may be described as a “passive” forum for adjusting disputes, the Commission may assume a much more “active” role).

<sup>74</sup> D.13-07-048, *Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates* (July 29, 2013), at p. 4.

<sup>75</sup> *Ibid.*

<sup>76</sup> See *Pacific Legal Foundation*, *supra*, 33 Cal.3d at p. 163; Decision, at pp. 22–23; D.13-07-048, at p. 4.

<sup>77</sup> CRPC Opening Comments on the Proposed Decision, at pp. 4–7; see D.04-10-039, at p. 26 (observing a “chicken and egg” dilemma that occurs when a corporation constructs its initial public utility property and has to file for a CPCN prior to commencing construction even though strictly speaking, it is not yet providing public utility services until the construction is completed).

<sup>78</sup> D.11-12-056, at p. 4; CRPC’s Opening Comments on the Proposed Decision, at pp. 4–7.

### 3. The Decision's Cites Are Inapposite.

The Decision also cites Commission cases applying ripeness principles where review was deemed premature because parallel proceedings were still underway and could resolve underlying rights or factual issues central to the Commission's determination.<sup>79</sup> However, these cases are distinguishable from the circumstances presented here.

*First*, the Decision's reliance on D.10-06-006 is misplaced.<sup>80</sup> In that case, the Commission dismissed North County Communications Corporation's (NCC) rate-setting application because the triggering Federal Communications Commission (FCC) order was simultaneously under review in the U.S. Court of Appeals for the D.C. Circuit. The outcome of that federal appeal could directly affect—or entirely moot—the state-level issues before the Commission. The Commission also noted that there was no indication the FCC intended to rely on any rate or determination the CPUC might develop in resolving the underlying NCC–MetroPCS dispute. Proceeding under those circumstances risked producing a rate or decision that would be irrelevant, unused, or inconsistent with the federal outcome.

Those circumstances bear no resemblance to the situation here. The pending litigation involving the City of Antioch's cross-claims for abandonment, trespass, ejectment, and declaratory relief poses no risk of mootness, preempting, or undermining the Commission's jurisdictional determination. No court of the State can confer public utility status on CRPC. That determination lies exclusively with the Commission. Judicial resolution of Antioch's cross-claims for breach of contract, trespass, ejectment, and nuisance ("Phase II Pipeline Litigation") cannot eliminate the Commission's statutory power to determine public utility status and issue a CPCN. Unlike D.10-06-006, there is no parallel proceeding here that could negate, supersede, or render irrelevant a Commission decision on the Application.

Although the Phase II Pipeline Litigation includes Antioch's argument that ownership of the portion of the UI Pipeline located within the City vested in the City following termination of CRPC's franchise agreement in 2021, the resolution of that legal issue has no bearing on whether CRPC is a public utility or on the Commission's authority to grant a CPCN.<sup>81</sup> As explained

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<sup>79</sup> Decision, at pp. 23–24.

<sup>80</sup> D.10-06-006, Decision Dismissing Application Without Prejudice Due to Pendency of Federal Proceedings, *Application of North County Communications Corporation of California (U5631C)* (June 7, 2010).

<sup>81</sup> See Decision, at p. 27.

above, the Decision’s interpretation of Sections 216 and 222 as requiring present ownership of the entire pipeline is incorrect. The statutes do not impose such a requirement, and public utility status may rest on present or prospective ownership, control, operation, or management. Thus, uncertainty regarding ownership of one segment of the UI Pipeline does not impair the Commission’s ability to confer public utility status or to grant a CPCN. Furthermore, that determination would allow CRPC to pursue eminent domain and fully resolve its ownership status of the UI Pipeline within the Cities.

**Second**, the Decision’s reliance on D.97-09-058<sup>82</sup> is also misplaced. In that case, Women’s Energy Inc. (“WEI”) sought to serve as the electricity provider for the Presidio after its transfer to the Department of the Interior. The National Park Service (“NPS”) required bidders to demonstrate either CPCN authority or an exemption. WEI filed an application asserting that it was not subject to Commission jurisdiction, paired with a pro forma CPCN application. The Commission ultimately held in D.95-01-045 that WEI did require a CPCN, and WEI petitioned for rehearing. Critically, while rehearing was pending, the NPS awarded the Presidio contract to PG&E.<sup>83</sup> All unsuccessful bidders (including WEI) challenged that award before the General Accounting Office, and those challenges were denied or dismissed. WEI then abandoned its efforts entirely: it did not pursue further remedies and failed to augment its CPCN application.<sup>84</sup> As a result, the Commission dismissed WEI’s application without prejudice in D.96-06-042. Given that WEI no longer had any opportunity to serve the Presidio, the Commission reasonably concluded in D.97-09-058 that pursuing WEI’s jurisdictional arguments would not be an effective use of resources, as WEI no longer required a CPCN determination at all.

This case is entirely different. D.97-09-058 involved an applicant that no longer needed a CPCN because its service opportunity had disappeared. Here, CRPC is actively seeking to operate the UI Pipeline as a public utility. CRPC has not lost—and cannot lose through parallel litigation—the opportunity to operate the UI Pipeline as a public utility. Unlike WEI, CRPC remains the only entity positioned to operate the existing in-state pipeline, and nothing in the pending litigation divests CRPC of the ability to seek a CPCN or eliminates the need for a Commission jurisdictional determination. While D.97-09-058 involved an applicant that no

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<sup>82</sup> *Application of Women’s Energy, Inc.* (1997) 75 CPUC 2d 624.

<sup>83</sup> *Id.* at pp. 5–6.

<sup>84</sup> *Ibid.*

longer had any service opportunity or need for a CPCN, CRPC's situation is the opposite; CRPC's ability to operate the UI Pipeline depends on a timely and definitive Commission ruling.

4. **The Decision's Dismissal of the Application as Unripe Disregards Eminent Domain as a Valid Legal Tool to Perfect Ownership of the Pipeline.**

The Decision's reliance on the ripeness doctrine is a legal error warranting rehearing because this holding fails to recognize that, upon issuance of a CPCN, CRPC would have lawful eminent domain authority that could be used to perfect ownership of the UI Pipeline.<sup>85</sup>

The Decision's dismissal of the Application as unripe rests on a fundamental misunderstanding of the relationship between municipal franchise rights and the eminent domain authority of public utilities. The Decision erroneously contends that it cannot make a jurisdictional determination without final determination of CRPC's underlying rights to own, control, operate, or manage the UI Pipeline through parallel judicial and local administrative proceedings.<sup>86</sup>

As Indicated Shippers has explained in this proceeding, eminent domain authority provides an alternate avenue for CRPC to secure the necessary rights-of-way for the UI Pipeline—such authority exists regardless of the status of either the franchise agreements with the City of Antioch and City of Brentwood or the City of Antioch encroachment permit.<sup>87</sup> To the contrary, public utility eminent domain authority was intended for just these types of circumstances—where local private or public landowners seek to thwart crucial state infrastructure for parochial local reasons. The California Law Revision Commission<sup>88</sup> has previously considered and rejected proposals to require public utilities to obtain approval from local jurisdictions before exercising eminent domain authority.<sup>89</sup> The Law Review Commission's rationale was that “[u]tility service is a matter of statewide concern, and a *locality ought not to be in a position to frustrate the utility service* by precluding otherwise appropriate

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<sup>85</sup> Pub. Util. Code, § 1757, subd. (a)(3).

<sup>86</sup> Decision, at p. 22.

<sup>87</sup> Indicated Shippers Opening Comments on the Proposed Decision, at pp. 9–11.

<sup>88</sup> The California Law Revision Commission is an independent state agency that assists the Legislature and Governor by examining California law and recommending needed reforms. (See California Law Revision Commission, General Information, <https://clrc.ca.gov/> (last visited Nov. 12, 2025).)

<sup>89</sup> California Law Revision Commission, Tentative Recommendation, Condemnation by Privately Owned Public Utility 10-11 (Sept. 1998), <https://clrc.ca.gov/pub/Misc-Report/TR-PubUtilCondemn.pdf>.

condemnation.”<sup>90</sup> As the California Law Revision Commission explained, eminent domain is an important tool in allowing the construction or operation of crucial utility infrastructure.

Courts have also consistently held that acquiring property rights for the construction or operation of utility infrastructure in the face of local opposition is an appropriate use of eminent domain authority. The Court of Appeal decision in *Shell California Pipeline Company v. City of Compton* (1995) 35 Cal.App.4th 1116 (“*Shell*”), cited by both CRPC and Independent Shippers, provides a prime example of this legal tenet.<sup>91</sup> In *Shell*, an oil company faced with local opposition failed to negotiate the renewal of franchise agreements with a city to operate two oil pipelines under city streets. The company subsequently transferred title to the pipelines to a subsidiary public utility pipeline company, which then filed a condemnation action against the city to acquire the easements.<sup>92</sup> The court approved the taking by eminent domain, finding that the transportation of oil products by subsurface pipelines rather than by tanker trucks served the public interest and that the submittal to the Commission’s jurisdiction in effect dedicated the lines to public use.<sup>93</sup>

*Unocal California Pipeline Co. v. Conway* (1994) 23 Cal.App.4th 331 (“*Unocal*”) provides another example of a public utility appropriately exercising eminent domain authority to address local opposition. In *Unocal*, a pipeline corporation sought public utility status for the purpose of initiating an eminent domain action to acquire a subsurface easement under a private ranch where the ranch owners opposed the easement.<sup>94</sup> The Court of Appeal found that Unocal, a pipeline corporation that transported its own oil to a parent company—its only customer—was nonetheless a public utility when it had dedicated its facilities to public use and thus qualified as a public utility authorized to exercise eminent domain authority.<sup>95</sup> The *Shell* and *Unocal* decisions reaffirm that local opposition cannot—and should not—override the Legislature’s grant of eminent domain authority to public utilities, whose ability to construct and operate essential utility infrastructure is a matter of statewide concern.

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<sup>90</sup> *Id.* at pp. 10-11 fn. 33, emphasis added.

<sup>91</sup> CRPC’s Opening Comments on the Proposed Decision, at p. 12; Indicated Shippers Opening Comments on the Proposed Decision, at pp. 10–11.

<sup>92</sup> *Shell, supra*, 35 Cal.App.4th at p. 1119.

<sup>93</sup> *Id.* at pp. 1126–1127.

<sup>94</sup> *Unocal, supra*, 23 Cal.App.4th at p. 334.

<sup>95</sup> *Id.* at p. 335.

The pending parallel judicial and administrative proceedings need not be finalized before the Commission can act on the Application. It is enough at this stage that CRPC provides a viable path forward to maintain the operation of the UI Pipeline through the exercise of eminent domain authority. That methodical approach also would be consistent with the numerous other occasions where the Commission granted public utility status where the exercise of eminent domain was critical to the project being contemplated, including in all of its decisions granting public utility status to independent storage providers.<sup>96</sup>

The Decision cautions that CRPC’s Application “may circumvent the Cities’ franchise agreement expirations, Antioch’s judicially-affirmed termination of CRPC’s franchise rights, [and] the Cities’ pending administrative proceedings regarding CRPC’s operating rights for the UI Pipeline segments within both Cities.”<sup>97</sup> That prejudicial view of CRPC’s request is directly contrary to established California law, cited in CRPC’s Reply to the Cities’ Protests and CRPC’s briefing on threshold issues,<sup>98</sup> that confirms the propriety of CRPC’s Application, and the use of eminent domain authority when a city denies a franchise agreement extension. As the Court of Appeal explained in *Shell*, the denial of a franchise agreement does not preclude a public utility from acquiring an easement under the law of eminent domain.<sup>99</sup>

CRPC would be appropriately exercising a statutory right afforded public utilities, and codified in the Public Utilities Code. Commission precedent is replete with examples of entities successfully seeking public utility status for just such a purpose, including in situations where the exercise of eminent domain was actively opposed.<sup>100</sup> And, though the Decision claims, in its

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<sup>96</sup> See, e.g., D.09-10-035, *Application of Gill Ranch Storage, LLC for Certificate of Public Convenience and Necessity for Construction and Operation of Natural Gas Storage Facilities* (Nov. 2, 2009); D.00-05-048, *Application of Lodi Gas Storage LLC for Certificate of Public Convenience and Necessity for Construction and Operation of Gas Storage Facilities* (May 18, 2000); D.97-06-091, *Application of Wild Goose Storage, Inc.* (1997) 73 CPUC 2d 90.

<sup>97</sup> Decision, at pp. 7–8.

<sup>98</sup> Reply California Resources Production Corporation to Joint Protest of City of Antioch and City of Brentwood (Aug. 31, 2023), at pp. 9–11; California Resources Production Corporation’s Reply Brief (Dec. 21, 2023), at pp. 8–9.

<sup>99</sup> *Shell, supra*, 35 Cal.App.4th at p. 1122 (affirming trial court finding of public interest and necessity for oil pipeline easements obtained through eminent domain, where city denied a renewal of the franchise, and the pipeline was transferred to a public utility entity solely to exercise the power of eminent domain).

<sup>100</sup> See, e.g., D.02-07-036, at p. 21, *Application of Wild Goose Storage, Inc.* (July 17, 2002) (“Following the CPCN grant, Wild Goose exercised its right of eminent domain to condemn certain real property in connection with the construction and operation of its existing natural gas

effort to distinguish the *WesPac* Decision, that WesPac did not seek public utility status “solely to bestow eminent domain powers to seize such necessary assets by condemnation of public rights-of-way,”<sup>101</sup> that contention, as with so much of the Decision’s discussion of WesPac, is unsupported by the record in the WesPac proceeding. It is entirely plausible that WesPac was motivated to seek public utility status precisely because its attempt to negotiate franchise agreements with the City and County of Los Angeles, and the City of Compton, had stalled.<sup>102</sup> The Decision’s assertion to the contrary reflects nothing more than speculation.

In sum, CRPC, as a public utility gas corporation, could appropriately seek to condemn property to preserve its *present* ownership, control, and management of the UI Pipeline, which would resolve the Decision’s concerns about the status of certain segments of the UI Pipeline. And it is entirely appropriate for the Commission to consider granting that relief to address a parochial political decision that has a significant economic and environmental impact beyond the borders of the City of Antioch (or Brentwood, were it to act). Rehearing must be granted to address this legal error.

**C. The Commission Failed to Proceed in the Manner Required by Law by Disregarding Its Procedural Obligations in Adopting the Decision.**

Rehearing is required because the Commission’s procedural errors infected every aspect of the Decision. The Commission disregarded the Scoping Memo and its own procedural rules, introduced a new dispositive ripeness theory without notice or an opportunity for the parties to be heard, and adopted a substantively revised decision without providing the public-review and comment period mandated by Section 311. These procedural errors deprived the parties of the opportunity to develop the evidentiary record on ownership of the UI Pipeline or brief the dispositive issues in the Decision. Had the Commission followed the procedures it established and those required by statute and due process it would have resolved the jurisdictional issues on a complete record and reached the merits rather than unlawfully dismissing the Application on an unbriefed ripeness theory.

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storage field. The record reflects that this condemnation has been the source of extensive litigation between Roseville Land and Wild Goose in the civil courts.”).

<sup>101</sup> Decision, at p. 33.

<sup>102</sup> See Revised Scoping Memo and Ruling in A.07-04-003 (WesPac Application), at p. 4.

**1. The Commission Violated the Scoping Memo, Its Procedural Rules, and Due Process.**

The Commission failed to proceed in the manner required by law by introducing an unscoped ripeness theory in the Decision, and by disregarding the phasing established in the Scoping Memo.<sup>103</sup> Rehearing is independently required because the ripeness theory was never identified in the Scoping Memo, noticed to the parties, briefed, or argued in violation of due process.<sup>104</sup>

It is well settled that the Commission must decide only those issues identified in the Scoping Memo. Rule 7.3 requires that the scoping memo determine the “issues to be addressed” in the proceeding. The California Supreme Court recently affirmed that if the Commission cannot fairly be said to have complied with the scoping memo requirement, “it has failed to regularly pursue its authority.”<sup>105</sup> In *Golden State Water*, the California Supreme Court held that the Commission acted unlawfully when it eliminated a long-standing water-conservation mechanism even though the scoping memo addressed only a forecasting issue.<sup>106</sup> The Court reasoned that the failure to include elimination of the mechanism in the scoping memo deprived the parties of adequate notice and the opportunity to develop evidence and argument.<sup>107</sup> The Court set aside the order because the issue did not fairly appear within the scope of the proceeding.<sup>108</sup>

The Commission violated these rules twice over. From the outset, this proceeding was structured in phases. The Scoping Memo identified a “threshold issue” of: “Whether CRPC is a public utility gas corporation as defined by Public Utilities Code Sections 216 and 222 that should be granted a certificate of public convenience and necessity to operate the UI Pipeline.”<sup>109</sup> The Scoping Memo further directed the parties to brief the threshold issue by addressing three questions as a “first step in [the] proceeding.”<sup>110</sup> As the schedule adopted in the Scoping Memo

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<sup>103</sup> Pub. Util. Code, § 1757, subd. (a)(2).

<sup>104</sup> Pub. Util. Code, § 1757, subd. (a)(6).

<sup>105</sup> *Golden State Water Co. v. Public Utilities Commission* (2024) 16 Cal.5th 380, 394–395.

<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*

<sup>109</sup> Scoping Memo, at pp. 2–3.

<sup>110</sup> *Id.* at p. 4.

makes clear, this Decision was to address *only* those threshold legal questions—and *only* those questions have been briefed by the parties.<sup>111</sup>

The Scoping Memo made clear that more fact-intensive questions would be addressed by discovery, prepared testimony, evidentiary hearings, and full briefing.<sup>112</sup> If further proceedings were required after issuance of an interim decision on the threshold issue, the Scoping Memo identified nine additional potential issues to be determined, including: “Whether CRPC qualifies as a public utility gas corporation entitled to a CPCN when the franchise agreements permitting it to run the UI Pipeline . . . have expired and both Cities have declined to renew the franchises[.]”<sup>113</sup> The Commission recognized that these later-phased questions involved “a number of contested, material issues of fact,” and that evidentiary hearings might be necessary.<sup>114</sup>

Despite the phased structure set forth in the Scoping Memo, the Decision dismisses the Application on two unscoped grounds: (1) a new and unbriefed ripeness theory raised for the first time in a revised proposed decision circulated two days before the voting meeting, and (2) alleged uncertainties in franchise and ownership matters that the Scoping Memo expressly reserved for later evidentiary development. The Commission never permitted CRPC, or the other parties, to conduct discovery, submit testimony, cross-examine witnesses, or brief the legal significance of these factual issues. To the extent the record is undeveloped, this is because the Commission foreclosed the parties from developing it. By disregarding its own procedural rules and the clear phasing requirements in the Scoping Memo, the Commission reached a legally flawed determination. Had the Commission followed the process it established, it could have resolved the jurisdictional question in Phase I and then permitted the parties to build a comprehensive evidentiary record on franchise and ownership matters before determining whether those issues bear on the Application.

The Decision’s procedural failures also amount to a violation of due process. As the California Supreme Court held in *People v. Western Air Lines, Co.* (1954) 42 Cal.2d 621, due process in Commission proceedings requires “adequate notice to a party affected and an

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<sup>111</sup> *Id.* at p. 6.

<sup>112</sup> *Ibid.*

<sup>113</sup> *Id.* at p. 5.

<sup>114</sup> *Ibid.*

opportunity to be heard before a valid order can be made.”<sup>115</sup> The Commission here issued the adopted Decision on short notice before the voting meeting and provided no procedural mechanism for comment, briefing, or evidentiary development on the newly introduced ripeness rationale. This violated the basic requirements of due process.

The Commission’s procedural violations were prejudicial because they deprived CRPC of any meaningful opportunity to address the dispositive issues. Had the Commission provided notice and an opportunity to be heard, CRPC could have presented evidence, conducted discovery, and submitted briefing demonstrating that the Application was ripe for adjudication. Instead, the Decision rested on factual assumptions and legal conclusions that CRPC was never permitted to test or rebut.

The prejudice is heightened because the Proposed Decision considered the merits and recommended denying the Application. Only by inserting a new, unbriefed ripeness theory did the Commission reverse course and dismiss the Application. This shift underscores that the outcome hinged on the late-introduced rationale. The Court of Appeal has recognized that addressing an issue beyond the scope of the issues identified in a scoping memo is a “prejudicial abuse of discretion.”<sup>116</sup>

By relying on both an unscoped legal theory and factual questions expressly deferred to a later phase, the Commission failed to follow its own rules, which constitute a failure to proceed in the manner required by law.<sup>117</sup> Rehearing is independently required because the Commission’s failure to provide the parties any opportunity to comment on or brief the newly introduced ripeness theory deprived them of a fair opportunity to be heard, resulting in a prejudicial violation of due process that requires correction.<sup>118</sup>

## **2. The Commission Adopted an Alternate Decision in Violation of Section 311.**

The Commission’s Revised Proposed Decision is an impermissible alternate decision because it fundamentally changed the outcome of the proceeding, and the Commission failed to

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<sup>115</sup> *People v. Western Air Lines, Co, supra*, 42 Cal.2d at p. 632.

<sup>116</sup> *Southern California Edison Co. v. Public Utilities Commission* (2006) 140 Cal.App.4th 1085, 1105-1106.

<sup>117</sup> *Id.* at p. 1106; Pub. Util. Code, § 1757, subd. (a)(2).

<sup>118</sup> Pub. Util. Code, § 1757, subd. (a)(6).

proceed in the manner required by law by issuing it without providing the parties an opportunity to review and comment.<sup>119</sup>

The Commission’s last-minute revisions effectively constituted an “alternate” proposed decision, triggering additional statutory notice and comment requirements that were not provided. Public Utilities Code Section 311, subdivision (e) requires that: “Any item appearing on the Commission’s public agenda as an *alternate item to a proposed decision*...shall be served upon all parties to the proceeding without undue delay and *shall be subject to public review and comment* before it may be voted upon.”<sup>120</sup> The statute defines “alternate” to mean “either a *substantive revision* to a proposed decision that materially changes the resolution of a contested issue or any *substantive addition* to the findings of fact, conclusions of law, or ordering paragraphs.”<sup>121</sup>

Here, the differences between the Proposed Decision mailed on October 17, 2025, and the adopted Decision—circulated only on February 3, a mere two days before the February 5 Commission meeting—are substantial. The Proposed Decision denied the Application on the merits, concluding that CRPC is neither a public utility under Section 216 nor a gas corporation under Section 222.<sup>122</sup> The adopted Decision, however, abandons those merits determinations and instead dismisses the Application without prejudice based on a new ripeness theory that was never raised, briefed, or subjected to party comment.<sup>123</sup> The adopted Decision alters the ultimate disposition of the case. That constitutes a material change in the resolution of a contested issue.<sup>124</sup> Moreover, the adopted Decision also substantially revises and adds new Conclusions of Law and Ordering Paragraphs.<sup>125</sup> Section 311 expressly identifies these types of changes as substantive revisions.<sup>126</sup> The Commission therefore was obligated to recirculate the revised decision for public comment before adoption.<sup>127</sup>

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<sup>119</sup> Pub. Util. Code, § 1757, subd. (a)(2).

<sup>120</sup> Pub. Util. Code, § 311, subd. (e) (emphasis added).

<sup>121</sup> *Ibid.* (emphasis added).

<sup>122</sup> Proposed Decision, at p. 26.

<sup>123</sup> *See* Decision, at pp. 22–25.

<sup>124</sup> *See* Pub. Util. Code, § 311, subd. (e).

<sup>125</sup> The adopted Decision revised Conclusions of Law Nos. 16, 17, 18 and 24 and added Conclusions of Law 21 and 26.

<sup>126</sup> *See* Pub. Util. Code, § 311, subd. (e).

<sup>127</sup> *Ibid.*

The Commission may contend that under Rule 14.1, subdivision (d) an “alternate proposed decision” exists only when prepared by someone other than the assigned Commissioner or Administrative Law Judge.<sup>128</sup> However, this argument is unavailing because Rule 14.1, subdivision (d) stands in clear contrast to the statute’s text. Section 311 contains no such restriction; it focuses on the nature and substance of the revisions, not on who authored them.

Additionally, the revisions at issue here are far more substantive than those in prior decisions where the Commission has relied on this interpretation of Section 311 to find no violation.<sup>129</sup> For example, in D.21-09-047, the Commission concluded that a revised proposed decision circulated one day before the voting meeting was not an alternate decision, even though it introduced a new rationale and additional factual findings, because the changes were made by the assigned Administrative Law Judge or Commissioner in response to party comments.<sup>130</sup> The revisions here go well beyond those in D.21-09-047; they introduce a new, unbriefed legal theory, alter the outcome of the proceeding, and substantially rewrite the Conclusions of Law and Ordering Paragraphs.

Applying the Commission’s interpretation of Section 311 here would be inconsistent with the legislative purpose of Senate Bill No. (“SB”) 779 (1998 Reg. Sess.), which enacted Section 311. Under the Commission’s interpretation, no revision made by the assigned Commissioner or Administrative Law Judge, no matter how substantive, would ever require additional notice and comment. The legislative history shows that SB 779 was passed to address concerns that the

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<sup>128</sup> See Rule 14.1, subd. (d).

<sup>129</sup> See, e.g., D.01-11-071, *Application of Southern California Edison Company (U 338-E) for Authority to Lease Available Land on the West Lugo-Mira Loma 500 kV Transmission Right of Way to Chuka Foods, Inc.* (Nov. 29, 2001); D.20-03-016, *Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local and Flexible Procurement Obligations for the 2019 and 2020 Compliance Years* (March 16, 2020); D.21-09-047, *Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency between Class A Water Utilities' Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low-Income Customers of Investor-Owned Water Utilities, and Affordability* (Sep. 23, 2021) (Addition of factual support drawn from workshop discussions and water utility annual reports that impacted how the decision reached its conclusions).

<sup>130</sup> D.21-09-047, *Order Instituting Rulemaking Evaluating the Commission's 2010 Water Action Plan Objective of Achieving Consistency Between Class A Water Utilities' Low Income Rate Assistance Programs, Providing Rate Assistance to All Low Income Customers of Investor-Owned Water Utilities, and Affordability* (Sept. 27, 2021), at pp. 23–24.

Commission “conducts much of its important business in private,” and to “expand and make permanent” opportunities for public review and comment before Commission decisions are adopted.<sup>131</sup> The Legislature sought to ensure transparency and public participation. The Commission’s adoption of the Decision here without affording the parties an opportunity to comment runs afoul of the core legislative purpose of SB 779.

Because the Decision was, in substance, an alternate decision adopted without providing the public-review and comment period mandated by Section 311, subdivision (e), the Commission failed to proceed in the manner required by law and rehearing must be granted.

#### **IV. REQUEST FOR ORAL ARGUMENT**

Pursuant to Rule 16.3, CRPC respectfully requests oral argument. Oral argument will materially assist the Commission in resolving the substantial legal errors raised in this Application for Rehearing and because the Decision implicates issues of major significance for the Commission.<sup>132</sup> The Decision departs from—and in several respects directly contradicts—long-standing Commission precedent regarding the interpretation of Sections 216 and 222, the Commission’s authority to determine public utility status based on prospective ownership or operation, and the established treatment of eminent domain as a valid mechanism for securing utility rights-of-way.<sup>133</sup> The Decision also presents consequential procedural questions concerning the Commission’s compliance with Section 311 and the statutory requirements governing alternate decisions.<sup>134</sup> Oral argument will meaningfully aid the Commission’s understanding of these issues of major significance for the Commission and is therefore warranted.

#### **V. CONCLUSION**

For the reasons set forth above, the Decision is legally erroneous. It fails to proceed in the manner required by law, is unsupported by substantial evidence, and misapplies controlling statutes and precedent. In adopting the Decision, the Commission also committed procedural violations, including failing to follow statutory procedural requirements and Commission rules,

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<sup>131</sup> California Bill Analysis of Sen. Bill No. 779, Assembly Floor (1997-1998 Reg. Sess.) Aug. 25, 1998.

<sup>132</sup> Rule 16.3, subd. (a).

<sup>133</sup> Rule 16.3, subd. (a)(1).

<sup>134</sup> Rule 16.3, subd. (a)(3).

and violating the due process rights afforded to the parties under the California and United States Constitutions. The Application for Rehearing should be granted.

Dated: March 13, 2026

Respectfully submitted,

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