

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



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Order Instituting Rulemaking to Continue
Oversight of Electric Integrated Resource
Planning and Procurement Processes.

R.25-06-019

**APPLICATION FOR REHEARING OF DECISION 26-02-057 BY THE
ALLIANCE FOR RETAIL ENERGY MARKETS, CALIFORNIA COALITION
OF LARGE ENERGY USERS, THE REGENTS OF
THE UNIVERSITY OF CALIFORNIA AND SHELL
ENERGY NORTH AMERICA (US), L.P.**

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In accordance with California Public Utilities Code section 1731¹ and the Commission’s Rules of Practice and Procedure (Rule) 16.1, the Alliance for Retail Energy Markets (AReM),² together with the California Coalition of Large Energy Users, the Regents of the University of California and Shell Energy North America (US), L.P., herein referred to collectively as the “Rehearing Parties,”³ file this application for rehearing of Decision (D.) 26-02-057 (Decision). The Decision was approved at the Commission’s February 26, 2026, voting meeting and was issued on March 5, 2026. This application is therefore timely filed.

Rule 16.1(c) of the Commission’s Rules of Practice and Procedure states in part that “Applications for rehearing shall set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make

¹ All subsequent code sections cited herein are references to the California Public Utilities Code unless otherwise specified.

² AReM is a California non-profit mutual benefit corporation formed by electric service providers (ESPs) that are active in the California’s direct access (“DA”) market. This filing represents the position of AReM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

³ Pursuant to Rule 1.8(d) of the Commission’s Rules of Practice and Procedure, the parties hereto have authorized AReM’s counsel to file this document on their behalf.

specific references to the record or law. The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.” This filing complies with that requirement. It explains in detail the various ways in which the Decision does not comply with California law, specifically references multiple provisions of the California Public Utilities Code with which the Decision fails to comply and provides two alternative solutions to how the Commission might correct its legal error.

I. INTRODUCTION

In its Decision, the Commission allocated procurement obligations based on current load share, ignored that ESP load is legally capped and assigned costs for load ESPs cannot serve, thereby disregarding the Section 397 requirement that procurement must be based on the “contribution of the load-serving entity's load and resource portfolio to the electrical system conditions that created the need for the procurement.”⁴

In approving and issuing the Decision, the Commission has significantly negatively impacted ESPs like the members of the Rehearing Parties. They have been allocated a proportional share of 6 gigawatts (GW)⁵ of new procurement to serve anticipated load growth despite the fact that Direct Access (DA) is capped and ESPs are statutorily prevented from serving the load. The Decision therefore improperly shifts costs to DA customers that should be borne by the customers of the investor-owned utilities (“IOUs”) and community choice aggregators (“CCAs”).

In doing so, the Rehearing Parties allege that the Commission has “acted without, or in excess of, its powers or jurisdiction” within the meaning of Section 1757(a)(1) and “has not

⁴ Section 397(a)(1).

⁵ The new procurement required is 2,000 megawatts (MW) of net qualifying capacity (NQC) by 2030, another 2,000 MW NQC, by 2031, and an additional 2,000 MW NQC by 2032.

proceeded in the manner required by law” within the meaning of Public Utilities Code section 1757(a)(2). Further, the Decision “is not supported by the findings” within the meaning of Section 1757(a)(3) for the following reasons:

- First, the Decision will cause inappropriate cost shifting counter to the requirements of Sections 397, 365.2, 366.2(d)(1), 366.3 and 454.52. The Decision imposes significant procurement obligations on all LSEs, including ESPs. ESPs that serve customers participating in California’s DA program are especially impacted by this decision due to the cap on DA participation. Because the cap has been reached for two of the three investor-owned utilities,⁶ customers are extremely limited in their ability to enroll in the DA program. In effect, ESPs will not be able to serve new customers, especially new large loads, including data centers, new electric vehicle charging stations and other loads, yet will be required to procure capacity to serve these loads, thereby forcing existing DA customers to pay for procurement costs that should be paid by the customers of LSEs that are actually permitted to serve new customers.
- Second, the Decision is unsupported by any findings or evidence that ESPs can serve the new load that is expected to occur. As a result, the Decision will cause ESPs to be harmed by cost-shifts from other LSEs that are allowed to serve the new load.

The Rehearing Parties therefore respectfully urge the Commission to grant rehearing of D.26-02-057 to correct the legal errors outlined above and discussed below in greater detail. Further, the Rehearing Parties suggest below two remedies to the Decision’s lack of compliance with California law:

⁶ The cap has been reached in PG&E and SDG&E territory. SCE has limited cap space available.

- The simplest remedy would be for the Commission to expeditiously reconsider Decision 21-06-033, that rejected reopening of Direct Access, and issue a new positive recommendation to the Legislature. Assuming the Legislature acts within the current 2026 legislative session to expand direct access, it would allow ESPs to compete for the new load, thus making the Decision’s cost allocation to ESPs reasonable.
- If the Commission is unwilling to reconsider D.21-06-033, and the Legislature does not expand direct access to allow ESPs to compete for the new load, the Commission should reallocate the Decision’s procurement obligations so they are consistent with Section 397, accounting for the cap on DA and ESP load constraints.

With respect to the first remedy, the Rehearing Parties and other allies are concurrently filing a Petition for Modification of D.21-06-033 asking that the Commission reconsider that decision and issue a recommendation to the Legislature asking it to remove the cap on DA and permit all non-residential customers to freely select the supplier of their choice. If this should lead to legislation lifting the cap on DA, ESPs will be able to compete for the new projected load and carry out the resource procurement necessary for serving the load.

II. THE DECISION WILL CAUSE INAPPROPRIATE COST SHIFTING COUNTER TO THE REQUIREMENTS OF NUMEROUS PROVISIONS OF THE CALIFORNIA PUBLIC UTILITIES CODE

Allocating procurement obligations based on current load share ignores the fact that ESP load is legally capped⁷ and assigns costs for load ESPs cannot serve. Doing so disregards Section 397, which requires that procurement must be based on the “contribution of the load-serving

⁷ See, Section 365.1.

entity's load and resource portfolio to the electrical system conditions that created the need for the procurement.”

In the following discussion, the Rehearing Parties explain in detail how the Commission’s Decision violates multiple provisions of the California Public Utilities Code and ignores repeated directives from the Legislature to the effect that cost shifting should neither burden bundled load nor departed load. In the Decision, however, the Commission inappropriately shifts costs to unbundled DA customers, as described below.

A. THE DECISION VIOLATES THE PROVISIONS OF SECTION 397

Section 397 provides in part as follows:

(a)(1) The commission shall, in an existing or a new proceeding, develop methodologies for allocating electrical system integration resource procurement needs to each load-serving entity, as defined in Section 380, based on the contribution of the load-serving entity's load and resource portfolio to the electrical system conditions that created the need for the procurement and for determining any costs resulting from a failure of a load-serving entity to satisfy its allocated procurement needs. Those needs and costs shall be limited to those that are subject to the commission's jurisdiction pursuant to Section 380, 454.51, or 454.52. [emphasis added]

The Decision clearly does not identify any “contribution” of DA customers or ESPs “to the electrical system conditions that created the need for the procurement.” Rather, it simply imposes costs on ESPs and DA customers regardless of the fact DA is statutorily capped. Section 365.1 legally constrains ESP load growth and the Decision’s allocation methodology fails to account for this statutory limitation.

It is notable that D.21-06-035, an earlier Decision that similarly orders LSEs to procure new generating capacity, recognized Section 397 as applicable to IRP-related procurement.⁸ D.21-06-035 goes on to state that the Commission would later comply with Section 397 after doing

⁸ D.21-06-035, at p. 52.

“more work to design and vet the finer points of a methodology...in a process to be conducted later in this proceeding.”⁹ This work was never completed.

As further background, in D.01-09-060, the Commission acted to suspend direct access as directed by the California legislature, as of September 20, 2001. That decision only applied the suspension to prospective, new DA service, noting the questionable legality of either prohibiting current DA customers from renewing existing contracts and agreements, or retroactively suspending DA.¹⁰

In subsequent decisions, the Commission recognized its obligation to both honor the contractual rights of DA customers while at the same time adhering to the suspension requirements of AB 1X.¹¹ To comply with these obligations, the Commission adopted what it called a “standstill approach” that allowed DA to continue for pre-suspension DA customers.¹² In 2008, the Commission again recognized the preeminent role of the California legislature in establishing the scope of DA when it ultimately denied a request from AReM to expand DA participation, finding that because DWR was still supplying power to retail customers, AB 1X prohibited further expansion of DA.¹³

Shortly after the Commission declined to expand DA in light of the then-current legislative direction in AB 1X, the California legislature adopted Senate Bill (SB) 695, which directed the Commission to increase the allowable DA kilowatt-hour limit for nonresidential customers. SB 695 was signed into law as an urgency statute, adding section 365.1(b) to the California Public Utilities Code, which states in relevant part:

⁹ *Id.*, at p. 53.

¹⁰ *Id.* at 7.

¹¹ R.19-03-009 OIR at 3.

¹² D.02-03-055, as modified by D.03-01-078, rehearing denied by D.03-09-027.

¹³ D.08-02-033 at 22.

The commission *shall* allow individual retail nonresidential end-use customers to acquire electric service... up to a maximum allowable total kilowatt hours annual limit. (Emphasis added.)

The Commission implemented SB 695 in D.10-03-022. In that decision, it recognized the mandatory nature of section 365.1(b), stating that it “requires the Commission to authorize increases in the maximum kilowatt-hour limit on DA transactions,” and that the Commission “must adopt and implement” the increases authorized by SB 695.¹⁴

In 2018, the California legislature acted again to expand Direct Access when it enacted SB 237. SB 237 added section 365.1(e) to the Public Utilities Code. Section 365.1(e) states:

On or before June 1, 2019, the commission shall issue an order regarding direct transactions that provides as follows:

(1) Increase the maximum allowable total kilowatt-hours annual limit by 4,000 gigawatt hours and apportion that increase among the service territories of the electrical corporations.

(2) All residential and nonresidential customer accounts that are on direct access as of January 1, 2019, remain authorized to participate in direct transactions.

Again, the Commission recognized the mandatory nature of the legislature’s direction in section 365.1(e).¹⁵

As the Commission has repeatedly recognized in numerous decisions implementing the California legislature’s mandates concerning the permitted scope of DA—whether suspending further expansion pursuant to AB 1X or expanding the cap pursuant to SB 695 and SB 237—the Commission has abided by and conformed to legislative dictates concerning the appropriate scope of DA and the extent to which retail customers may engage in direct transactions with ESPs.

Now, however, the Decision ignores Section 397 and its explicit directive that the allocation of integrated resource procurement needs must be, “based on the contribution of the

¹⁴ D.10-03-022 at 2, 4.

¹⁵ R.19-03-009 OIR at 7.

load-serving entity's load and resource portfolio to the electrical system conditions that created the need for the procurement.” In its February 26, 2026, opening comments on the proposed decision, AReM pointed out that the discussion of procurement need allocation¹⁶ did not address ESP’s ability to serve load growth from data centers, even though the IEPR forecast used to support the decision includes approximately 3 GW of new data center load,¹⁷ roughly half of new load the 6 GW of procurement is proposed to serve. As AReM explained:

As long as the current DA program cap on load remains in place, ESPs will not be capable of serving new large customers in any region. Notwithstanding this constraint, the PD allocates procurement need for all load, including new data center load, based on 2026 load shares. Simply stated, this methodology assigns procurement responsibility to LSEs that will not serve the incremental load driving the need for new resources, while imposing procurement obligations on ESPs that are legally precluded from serving that load.¹⁸

Nevertheless, the Decision simply states its understanding that DA load is capped and then declines to exempt ESPs from the need to procure their proportional share of the additional capacity based on the hoary and tired rationale that “all customers and providers benefit from a reliable electric system.”¹⁹ Notably, the Decision omits any discussion of Section 397 and its mandate that the allocation of electrical system integration resource procurement needs to each

¹⁶ Decision, at pp. 40-43.

¹⁷ California Energy Commission, Final 2024 Integrated Energy Policy Report Update, October 2025, Figure 15, p. 40.

¹⁸ February 26, 2026, *Comments Of The Alliance For Retail Energy Markets On Proposed Decision Requiring 2029-2032 Electric Resource Procurement And Transmitting Portfolios For 2026-2027 Transmission*, at p. 3. Planning Process [footnotes omitted].

¹⁹ The Proposed Decision erroneously claimed the statutory cap on DA load was applied as a percentage of total load instead of a fixed annual kWh amount. If the cap were applied as a percentage, then ESPs could serve new customers as load grows, but it is not true and ESPs cannot serve the load growth. The final Decision corrected the error, but instead of taking meaningful steps to adjust the procurement allocation as a result, the Commission fell back on the flimsy rationale that since all customers benefit from the procurement, no action was necessary.

load-serving entity “shall” be, “based on the contribution of the load-serving entity's load and resource portfolio to the electrical system conditions that created the need for the procurement.”²⁰

This is in contrast to D.21-06-035, an earlier Decision that similarly orders LSEs to procure new generating capacity. That Decision recognized Section 397 as applicable to IRP-related procurement.²¹ D.21-06-035 stated that the Commission would later comply with Section 397 after doing “more work to design and vet the finer points of a methodology...in a process to be conducted later in this proceeding.”²² This work was never completed.

B. THE DECISION ALSO VIOLATES THE PROVISIONS OF SECTION 454.52(c)

Section 454.52 requires the Commission to adopt a process for load-serving entities (LSEs) to file Integrated Resource Plans. Enacted through Senate Bill 350, it sets forth the IRP process for load-serving entities to create a reliable, clean energy future. In adopting this statute, however, the Legislature was also careful to consider how costs of procurement should be allocated. Section 454.52(c) provides in part:

To the extent that additional procurement is authorized for the electrical corporation in the integrated resource plan or the procurement process authorized pursuant to Section 454.5, the commission shall ensure that the costs are allocated in a fair and equitable manner to all customers consistent with Section 454.51, that there is no cost shifting among customers of load-serving

²⁰ California has codified the distinction between “shall” and “may” in multiple codes. California Government Code § 14 and Education Code § 36 both explicitly state: “‘Shall’ is mandatory and ‘may’ is permissive.” This is the foundational rule that courts ordinarily apply when interpreting California statutes. It is a well-settled principle of statutory construction that the word “may” is ordinarily construed as permissive, whereas “shall” is ordinarily construed as mandatory. Section 397 states that the Commission shall allocate procurement based on an LSE’s contribution to the electrical system conditions that created the need for the procurement. In failing to observe this directive, the Decision fails to pass legal muster. To correct this failure, the decision should overturn D.21-06-033 to allow DA program expansion, or if the DA program cap is not lifted, reallocate the Decision’s procurement obligations so they are consistent with Section 397, accounting for the cap on DA and ESP load constraints .

²¹ D.21-06-035, at p. 52.

²² *Id.*, at p. 53.

entities, and that community choice aggregators may self-provide renewable integration resources consistent with Section 454.51. [Emphasis added]

This is yet another example of how the Commission has overwhelmingly ignored legislative intent. Its Decision fails to allocate the costs of the required procurement equitably, imposing an unfair burden on ESPs, whose load is capped by Section 365.1, and shifting costs from the customers of the IOUs and CCAs who can serve new load to the DA customers of ESPs.

C. THE DECISION ALSO VIOLATES THE PROVISIONS OF SECTION 366.2(d)(1)

AB 117 clarified Legislative intent regarding cost recovery and cost shifting by adding Section 366.2(d)(1) to the Public Utilities Code, describing it as “declaratory of existing law.”²³

The Section states:

It is the intent of the Legislature that each retail end-use customer that has purchased power from an electrical corporation on or after February 1, 2001, should bear a fair share of the [DWR’s] electricity purchase costs, as well as electricity purchase contract obligations incurred as of the effective date of the act adding this section, that are recoverable from electrical corporation customers in commission-approved rates. It is further the intent of the Legislature to prevent any shifting of recoverable costs between customers. [emphasis added]

In allocating significant procurement obligations to ESPs whose customer base is capped, the Commission’s Decision has acted contrary to the Legislature’s intent. Costs that should be borne by the LSEs that can actually serve the anticipated load growth will be shifted to ESPs and their DA customers, thereby ignoring the Legislature’s intent. The Decision fails to comply with Section 366.2(d)(1) due to the fact it ignores the Legislature’s clearly expressed declaration that it wishes the Commission to “prevent any shifting of recoverable costs between customers.”

²³ AB 117 Section 4(d)(2).

D. THE DECISION ALSO VIOLATES THE PROVISIONS OF SECTION 365.2

Section 365.2 provides in its entirety as follows:

The commission shall ensure that bundled retail customers of an electrical corporation do not experience any cost increases as a result of retail customers of an electrical corporation electing to receive service from other providers. The commission shall also ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load. [emphasis added]

The Decision ignores this fundamental mandate as it fails to consider how the imposition of procurement costs on ESPs and their DA customers will quite clearly include “costs that were not incurred on behalf of the departing load.”

In this respect, the Decision is fundamentally inequitable. It discriminates against DA customers and their ESP suppliers by imposing a costly procurement obligation that should be borne by the customers of LSEs that are actually able to serve the expected new load.

A series of key Commission decisions have established that departed load should not bear costs incurred for the benefit of other customers. For example, the foundational Decision 03-04-030 established that while many departing loads must pay a Cost Responsibility Surcharge (CRS), certain small and environmentally-preferable customer generation (under 1 MW) were exempted from paying DWR ongoing power charges and other CRS components, as these costs were not incurred on their behalf.²⁴

In Rulemaking 17-06-026, the Commission considered refinements to the Power Charge Indifference Amount (PCIA) charge. The proceeding led to Decision 18-10-019, which provided as follows:

AB 117 clarified Legislative intent regarding cost recovery and cost shifting by adding Section 366.2(d)(1) to the Public Utilities Code, describing it as “declaratory

²⁴ D.03-04-030, Opinion On Cost Responsibility Surcharge Mechanisms For Customer Generation Departing Load, at pp. 38-40.

of existing law:”

It is the intent of the Legislature that each retail end-use customer that has purchased power from an electrical corporation on or after February 1, 2001, should bear a fair share of the [DWR’s] electricity purchase costs, as well as electricity purchase contract obligations incurred as of the effective date of the act adding this section, that are recoverable from electrical corporation customers in commission-approved rates. It is further the intent of the Legislature to prevent any shifting of recoverable costs between customers.²⁵

The decision went on to explain that:

These basic principles regarding overall cost minimization and prevention of cost shifts between customers have remained in place since the beginning of legislative and Commission efforts to equitably address the cost responsibility issues regarding departing load. However, more recent legislative direction reemphasizes that the Commission must ensure equity on both sides of the departing load transaction, that is, for departing load as well as remaining bundled investor-owned utility (IOU) load.²⁶

That decision described how in 2015, SB 350 added Sections 365.2 and 366.3 to the Public Utilities Code, “which make explicit the dual requirements that (1) bundled service IOU customers do not experience any cost increases when other retail customers elect to receive service from other providers, or due to the implementation of a CCA program, and (2) customers who depart for another provider or due to formation of a CCA do not experience any cost increases due to an allocation of costs that were not incurred on behalf of the departing load.”²⁷

Yet this latest Decision would clearly contravene this legislative mandate by allocating costs to DA customers and the ESPs who serve them despite the fact that DA load is capped and ESPs is statutorily prevented from serving the projected load growth. Four years later, the Commission again emphasized the point that costs should not be allocated when not incurred on behalf of departing load.

²⁵ D.18-10-019, Decision Modifying The Power Charge Indifference Adjustment Methodology, at p. 6 [emphasis added].

²⁶ *Id.*, at p. 7 [emphasis added].

²⁷ *Ibid.*

In 2022, in the prior IRP proceeding, Rulemaking 20-05-003, the Commission issued its decision 22-05-015, which states quite clearly that:

As a starting point for designing cost allocation for our purposes here, we affirm the following guiding principles. In particular, the cost allocation must:

- meet cost causation principles (i.e., generally, costs are borne by and benefits are credited to the customers on behalf of whom they were procured).²⁸

The Commission's latest Decision, however, requires ESPs to procure power that will not meet the needs of their DA customers because DA is capped. Instead, the benefits of this procurement will accrue to the customers of other LSEs, thus totally contravening the Commission's historic endorsement of cost causation principles. DA customers will not be responsible for the load growth anticipated in the decision. That load growth will be served by IOUs and CCAs and not by ESPs. Furthermore, the Commission has even more recently stated that departing load is not to be held responsible for costs not incurred on their behalf.

In Rulemaking 25-02-005²⁹ the Commission implemented revisions to the methodology the Commission uses when calculating the Resource Adequacy (RA) Market Price Benchmark (MPB) utilized in calculating the Power Charge Indifference Adjustment (PCIA). The very first paragraph of the decision in that proceeding, D.25-06-049, states that, "The Commission is statutorily mandated to ensure that the movement of customers from bundled electric services to unbundled service does not shift costs to customers that remain with the utility or those that depart for Community Choice Aggregator (CCA) or Direct Access (DA) service."³⁰ Furthermore, D.25-06-049 further elucidated this fundamental principle when it stated that:

²⁸ D.22-05-015, Decision On Modified Cost Allocation Mechanism For Opt-Out And Backstop Procurement Obligations, at p. 7 [emphasis added].

²⁹ Order Instituting Rulemaking to Update and Reform Energy Resource Recovery Account and Power Charge Indifference Adjustment Policies and Processes.

³⁰ D.25-06-049, Decision Adopting Changes To The Calculation Of The Resource Adequacy Market Price Benchmark, at p. 1 [emphasis added].

The PCIA implements Public Utilities Code Sections 366.1 and 366.2, 365.28 and 366.392 , which require that (1) bundled service IOU customers do not experience any cost increases due to the departure of retail customers, and (2) customers who depart IOU service do not experience any cost increases due to an allocation of costs that were not incurred on their behalf.³¹

Yet the Decision ignores that fundamental principle by assigning onerous procurement obligations to ESPs, whose customers cannot use this power because it was not procured on their behalf. Rather, it would be procured on behalf of those LSEs whose load is not capped. Additionally, any future DA customers who may be fortunate to be able to take DA will not only be paying their ESP's excess procurement costs but the PCIA costs related to their host IOU procurement obligations under this Decision. This is yet another example of the significant issues created by the Decision.

In summary, the Legislature has directed and the Commission has repeatedly affirmed that principles of cost causation mean that costs are not to be allocated to parties that are not the cause of the costs that are incurred. The costs that will be incurred to serve the load growth forecast in the Decision should be borne by those LSEs that can serve that load. With DA capped, ESPs are unable to do so and thus should not be allocated any portion of the costs to serve the anticipated load growth. As a result, the Commission should overturn D.21-06-033 to allow DA program expansion, or if the DA program cap is not lifted, reallocate the Decision's procurement obligations so they are consistent with Section 397, accounting for the cap on DA and ESP load constraints

E. THE DECISION ALSO VIOLATES THE PROVISIONS OF SECTION 366.3

As noted above, in 2015, SB 350 added Sections 365.2 and 366.3 to the Public Utilities Code. Section 366.3 provides as follows:

³¹ *Id.*, at p. 5.

Bundled retail customers of an electrical corporation shall not experience any cost increase as a result of the implementation of a community choice aggregator program. The commission shall also ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load.

Once again, this excerpt from the Public Utilities Code demonstrates how the Decision has ignored the Legislature's express directives. The procurement directed by the Decision is designed to serve the anticipated load growth described in the Decision. A significant portion of the required procurement is assessed to ESPs. Yet this load growth will not be able to opt for DA due to the fact it is capped by Section 365.1. As a result, any future procurement costs would not be incurred on behalf of DA customers. The Decision therefore violates the provisions of both Sections 365.2, as discussed above, and Section 366.3.

F. THE DECISION ALSO VIOLATES THE PROVISIONS OF SECTION 454.52(c)

Section 454.52 requires the Commission to adopt a process for load-serving entities (LSEs) to file Integrated Resource Plans. Enacted through Senate Bill 350, it sets forth the IRP process for load-serving entities to create a reliable, clean energy future. In adopting this statute, however, the Legislature was also careful to consider how costs of procurement should be allocated. Section 454.52(c) provides in part:

To the extent that additional procurement is authorized for the electrical corporation in the integrated resource plan or the procurement process authorized pursuant to Section 454.5, the commission shall ensure that the costs are allocated in a fair and equitable manner to all customers consistent with Section 454.51, that there is no cost shifting among customers of load-serving entities, and that community choice aggregators may self-provide renewable integration resources consistent with Section 454.51. [Emphasis added]

This is yet another example of how the Commission has overwhelmingly ignored legislative intent. Its Decision fails to allocate the costs of the required procurement equitably, imposing an unfair

burden on ESPs, whose load is capped by Section 365.1, and shifting costs from the customers of the IOUs and CCAs who can serve new load to the DA customers of ESPs.

G. CONCLUSION OF STATUTORY ANALYSIS

As explained above, the Commission's Decision violates multiple provisions of the California Public Utilities Code and ignores repeated directives from the Legislature to the effect that neither bundled load nor departed load should be burdened by cost shifting. Yet the Decision violated these clear legislative directives by imposing unreasonable costs on ESPs and the DA customers they serve. As DA has been capped for many years, the Decision inappropriately allocates costs to ESPs and DA customers to serve projected significant new load growth despite the fact that ESPs is statutorily prevented from serving this load growth.

To conclude, The Decision disregards the Section 397 requirement that procurement must be based on the "contribution of the load-serving entity's load and resource portfolio to the electrical system conditions that created the need for the procurement." The costs of the required new procurement should be allocated to the customers of LSEs that are actually able to serve the projected new load growth described in the Decision. The Commission should overturn D.21-06-033 to allow DA program expansion, or if the DA program cap is not lifted, reallocate the Decision's procurement obligations so they are consistent with Section 397, accounting for the cap on DA and ESP load constraints.

III. THE DECISION'S ALLOCATION OF PROCUREMENT OBLIGATIONS TO ESPs IS NOT SUPPORTED BY SUFFICIENT FINDINGS OR EVIDENCE

Commission decisions must include findings of fact and conclusions of law to be legally valid, as mandated by Public Utilities Code Section 1757(a)(4). These findings must be supported by substantial evidence from the record and are crucial for ensuring accountability and

transparency in regulatory actions, such as rate cases or safety investigations. Section 1757(a)(4) provides how a court may examine a Commission decision. It provides in part that in a ratesetting proceeding, “the review by the court shall not extend further than to determine, on the basis of the entire record which shall be certified by the commission, whether any of the following occurred:

- (1) The commission acted without, or in excess of, its powers or jurisdiction.
- (2) The commission has not proceeded in the manner required by law.
- (3) The decision of the commission is not supported by the findings.
- (4) The findings in the decision of the commission are not supported by substantial evidence in light of the whole record.”

However, the Decision’s discussion of cost allocation with respect to ESPs is quite sparse. It notes that, “Very few parties commented on the proposed primary allocation method in the ALJ Ruling, based on load forecasts and resource adequacy peak load. Shell specifically takes issue with allocating any procurement requirements to the ESPs until the cap on direct access load is lifted.”³² It then concludes as follows:

We understand the point made by Shell and others that the direct access load is capped. However, we decline to exempt ESPs from the need to procure their proportional share of the additional capacity found to be needed in this order. We note that all customers contribute to the overall need to add resources to meet reliability standards and we agree with reply comments on the proposed decision from SCE that all customers and providers benefit from a reliable electric system. Therefore, all LSEs should be required to procure for the reliability needs.³³

This brief discussion does not rise to the level of the findings necessary to impose tens of millions of dollars of procurement costs on ESPs who are not permitted to serve the anticipated load growth the procurement is expected to serve.

³² Decision, at p. 41.

³³ *Id.*, at p. 43.

Furthermore, the Decision contains absolutely no discussion of the provision of Section 397 that requires costs to be “based on the contribution of the load-serving entity's load and resource portfolio to the electrical system conditions that created the need for the procurement.”³⁴

The Decision also ignores the Public Utilities Code’s directive that the Commission must, “ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load.”³⁵ Nor does the Decision include findings as to how it complies with, “the intent of the Legislature to prevent any shifting of recoverable costs between customers.”³⁶

The legislative requirement that the Commission “ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load”³⁷ is also ignored in the Decision’s findings, as is the legislative mandate that the Commission must “ensure that the costs are allocated in a fair and equitable manner to all customers” and “that there is no cost shifting among customers of load-serving entities.”³⁸ Further, the Decision contains no finding concerning the Commission’s own often stated commitment to the principles of cost causation.

Finally, in 2023, the Commission issued D.23-04-040, its *Decision Adopting Electric Rate Design Principles And Demand Flexibility Design Principles*. Cost causation featured prominently among the decision’s discussion, with the following discussion of the principle adopted by the Commission:

iii. Rates should be based on cost causation.

³⁴ Section 397.

³⁵ Section 365.2

³⁶ Section 366.2(d)(1)

³⁷ Section 366.3

³⁸ Section 454.52(c).

This principle affirms that a customer, or a customer class, that causes a cost to be incurred by receiving service should pay for the cost of service. The purpose of this principle is to fairly apportion utility costs to customers and to encourage economically efficient decision making by customers for consumption and investments in electrification technologies and DERs.³⁹

Therefore, the Decision also ignores and contravenes its own electric rate design principles. The lack of findings on these issues is fatal to the viability and legality of the Decision. Manifestly, it is subject to court challenge. The Commission must eliminate the illegal imposition of procurement costs on ESPs that are barred by the DA cap from serving new load. Alternatively, it can act to remove the cap on DA so that ESPs can compete to serve the new load.

IV. **CONCLUSION – WHAT CAN THE COMMISSION DO TO CORRECT THE LEGAL FLAWS IN THE DECISION?**

The simplest remedy, as discussed more fully in the Petition for Modification of D.21-06-033 that is being filed contemporaneously today, is that the Commission should act to remove the cap on DA and permit all non-residential customers to freely select the supplier of their choice. In the five years since that decision was issued the industry and the service provided by ESPs has changed markedly. Assuming the Legislature acts within the current 2026 legislative session to expand direct access, it would allow ESPs to compete for the new load, thus making the Decision's cost allocation to ESPs reasonable.

If the Commission is unwilling to reconsider D.21-06-033, and the Legislature does not expand direct access to allow ESPs to compete for the new load, the most immediate way for the Commission to correct these legal errors would be to reallocate the Decision's procurement obligations so they are consistent with Section 397, accounting for ESP load constraints.

³⁹ Citations.

Doing so would comply with the Section 397 requirement that procurement must be based on the “contribution of the load-serving entity's load and resource portfolio to the electrical system conditions that created the need for the procurement,” as well as the Legislature’s directives to avoid cost shifting and comport with prior Commission decisions on cost causation.

As issued, the Decision manifestly disregards the interests of ESPs and the DA customers they serve. Since DA has been capped for years, ESPs cannot compete to serve the new load projected in the Decision. Therefore, it is contradictory to multiple provisions of the Public Utilities Code for the Commission to require ESPs to procure power for load they are forbidden to serve. The Decision is significantly flawed due to its failure to comply with California law and with the Commission’s own prior decisions.

Respectfully,



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