BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

FILED
04/21/26
04:59 PM
R2506019

Order Instituting Rulemaking to Continue Oversight of Electric Integrated Resource Planning and Procurement Processes.	R.25-06-019

RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) TO APPLICATION FOR REHEARING OF DECISION 26-02-057

AIMEE M. SMITH
8330 Century Park Court, CP32
San Diego, CA 92123
Telephone: (619) 207-8846
E-mail: amsmith@sdge.com

Attorney for
SAN DIEGO GAS & ELECTRIC COMPANY

April 21, 2026

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 1

II. STANDARD OF REVIEW 4

III. DISCUSSION 5

A. The Rehearing Parties Fail to Establish that the Commission's Approach to Allocating the Procurement Obligation Adopted in D.26-02-057 Violates Section 397 or the Requirement to Offer Findings in Support of the Decision 5

B. The Rehearing Parties Fail to Establish that the Commission's Approach to Allocating the Procurement Obligation Adopted in D.26-02-057 Will Result in Unlawful Cost Shift 9

C. The AFR Improperly Seeks to Relitigate Issues That Were Previously Considered and Rejected by the Commission 10

D. The AFR's Request to Modify D.21-06-033 Adopted in R.19-03-009 Should be Rejected as an Improper Collateral Attack 12

IV. CONCLUSION 13

TABLE OF AUTHORITIES

STATUTES AND LEGISLATION

Cal. Pub. Util. Code § 311(d) 4

Cal. Pub. Util. Code § 365.2 9

Cal. Pub. Util. Code § 366.2(d)(1) 9

Cal. Pub. Util. Code § 366.3 9

Cal. Pub. Util. Code § 397 .... *passim*

Cal. Pub. Util. Code § 454.52 9

Cal. Pub. Util. Code § 1705 4

Cal. Pub. Util. Code § 1709 12

Cal. Pub. Util. Code § 1732 4

Cal. Pub. Util. Code § 1757.1 4

COURT CASES

People v. Western Air Lines, Inc., 42 Cal.2d 621, 632-633 (1954) 12

Toward Utilities Rate Normalization v. Pub. Utils. Comm'n, 22 Cal. 3d 529, 540 (1978) 4

CALIFORNIA PUBLIC UTILITIES COMMISSION DECISIONS

D.07-03-047, 2007 Cal. PUC LEXIS 309 12

D.07-04-017, 2007 Cal. PUC LEXIS 356 12

D.07-05-033, 2007 Cal. PUC LEXIS 112 .... 12, 13

D.07-10-015, 2007 Cal. PUC LEXIS 552 12

D.08-04-063, 2008 Cal. PUC LEXIS 161 12

D.14-06-054, 2014 Cal. PUC LEXIS 273 .... 4, 5, 11

D.15-03-014, 2015 Cal. PUC LEXIS 133 4

D.21-06-033, 2021 Cal. PUC LEXIS 667 .... 2, 3, 12, 13

D.21-06-035, 2021 Cal. PUC LEXIS 300 .... *passim*

D.25-07-043, 2025 Cal. PUC LEXIS 322 4

D.26-02-057, 2026 Cal. PUC LEXIS 95 .... *passim*

<u>OTHER AUTHORITIES</u>

Commission Rules of Practice and Procedure, Rule 16.1 12

Commission Rules of Practice and Procedure, Rule 16.1(d)..1

Commission Rules of Practice and Procedure, Rule 16.4 12

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Oversight of Electric Integrated Resource Planning and Procurement Processes.	R.25-06-019

RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) TO APPLICATION FOR REHEARING OF DECISION 26-02-057

I. INTRODUCTION AND SUMMARY

Pursuant to Rule 16.1(d) of the Rules of Practice and Procedure ("Rules") of the California Public Utilities Commission (the "Commission"), San Diego Gas & Electric Company ("SDG&E") respectfully submits this response to the *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.* ("AFR") filed in the above-referenced proceeding by the Rehearing Parties[1/] on April 6, 2026.

In the AFR, the Rehearing Parties assert that the Commission's assignment of a portion of the procurement obligation adopted in Decision ("D.") 26-02-057 to energy service providers ("ESPs") constitutes legal error. Specifically, they argue that proportionally assigning the obligation to procure new resources to load-serving entities ("LSEs"), including ESPs, based on each LSE's share of the managed peak on the electric system in resource adequacy ("RA")

[1/] The Rehearing Parties include the Alliance for Retail Energy Markets, the California Coalition of Large Energy Users, the Regents of the University of California and Shell Energy North America (US), L.P..

program year 2026[2] violates Public Utilities Code Section 397,[3] which requires allocation based on each LSE's contribution to the electrical system conditions that created the need for the procurement, as well as statutory cost indifference provisions.[4] The Rehearing Parties propose two alternate forms of relief: (1) modification of D.21-06-033 issued in Rulemaking ("R.") 19-03-009 to support removal of the existing cap on direct access ("DA") service;[5] or (2) reallocation of the procurement obligation established in D.26-02-057.

As discussed below, the Rehearing Parties fail to meet their burden to demonstrate legal error. The load-based allocation approach used by the Commission in D.26-02-057 is consistent with the allocation approach used in the Commission's mid-term reliability decision, D.21-06-

---

[2] *See* D.26-02-057, p. 44 and Conclusions of Law ("COL") 15.

[3] Public Utilities Code § 397:

> (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.
>
> (2) The electrical system integration resource procurement needs and costs described in paragraph (1) shall include, but are not limited to, those relating to the following:
>
> > (A) Resource adequacy requirements associated with system flexibility, as described in subdivision (c) of Section 380.
> >
> > (B) Integration resources identified as needed, or proposed in response to system operational needs identified, through the process described in subdivision (a) of Section 454.51.
>
> (b) The commission shall use the methodologies developed pursuant to subdivision (a) in allocating electrical system integration resource procurement needs and any costs resulting from a failure to procure resources to satisfy those allocated procurement needs pursuant to Section 380, 454.51, or 454.52.
>
> (c) For purposes of this section, "electrical system integration resources" means resources that provide certain electrical system integration functions, benefits, or attributes, such as flexible ramping capability.
>
> (d) This section does not require the procurement of a specific resource or technology type.

[4] Statutory references herein are to the Public Utilities Code unless otherwise noted.

[5] AFR, pp. 4, 19.

035 (the "MTR Decision"),[6] where the Commission expressly acknowledged the requirements of Section 397 and found that ". . . to date we have allocated procurement requirements to all LSEs based on load share, because we have not made any findings that any LSE has created any differential need for system integration resources."[7] The Commission found in the MTR Decision that system integration needs are not "attributable to any particular LSE as distinguished from any other LSE."[8] The Commission applied the same analysis in D.26-02-057. As it had in the MTR Decision, the Commission found in D.26-02-057 that the load-based approach to allocating the procurement need is justified since "all customers contribute to the overall need to add resources to meet reliability standards."[9] Thus, D.26-02-057 meets the requirements of Section 397.

The AFR asks the Commission to revisit the Commission's finding in D.26-02-057 that all customers (including DA customers) contribute to the overall need to add resources, and issue a determination in Rehearing Parties' favor. The AFR fails to establish legal error; rather, it is an improper attempt to relitigate the claim made by ESPs that DA customers do not contribute to the procurement need identified in D.26-02-057 – a position that the Commission has already considered and rejected. In addition, the AFR's proposed remedy of modifying D.21-06-033 to express Commission support for removal of the cap on DA service constitutes an improper collateral attack since that decision was issued in a different proceeding. For these reasons, the AFR should be rejected in its entirety.

---

[6] D.26-02-057, p. 44 (" . . . we will allocate LSE procurement responsibility . . . in the same basic manner as the procurement requirements were allocated under the MTR and Supplemental MTR orders.").

[7] D.21-06-035, p. 52.

[8] See *id*., p. 53.

[9] D.26-02-057, p. 43.

II. STANDARD OF REVIEW

Section 1757.1(a)[10/] establishes that an order by the Commission may be found to be unlawful if it is proven that any of the following occurred:

(1) The order or decision of the commission was an abuse of discretion.

(2) The commission has not proceeded in the manner required by law.

(3) The commission acted without, or in excess of, its powers or jurisdiction.

(4) The decision of the commission is not supported by the findings.

(5) The order or decision was procured by fraud.

(6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.

Section 1705 requires that Commission decisions "contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision."[11/] However, the Commission need not provide "a complete summary of all proceedings and evidence leading to the decision."[12/] Rather, the standard is met if the discussion in the body of the decision supplements the Commission's findings and conclusions in a manner that offers "a meaningful opportunity to ascertain the principles and facts relied upon by the Commission in reaching its decision."[13/]

The rehearing applicant bears the burden of proving legal error.[14/] Section 1732 requires that an application for rehearing "set forth specifically the ground or grounds on which the

---

10/ The Commission has previously found that the instant rulemaking proceeding is subject to the standard of review set forth in Section 1757.1. *See* D.25-07-043, p. 5, citing D.15-03-014, p. 4, note 2.

11/ *See also* Section 311(d) (requiring the final decision adopted by the Commission to set forth recommendations, findings, and conclusions).

12/ *Toward Utilities Rate Normalization v. Public Utilities Commission*, 22 Cal. 3d 529, 540 (1978).

13/ *Id*.

14/ D.14-06-054, p. 3.

applicant considers the decision or order to be unlawful." The Commission has made clear that it will reject a rehearing application that fails to demonstrate that its order violates any rule or law or that is "no more than an attempt to relitigate a position that the Commission already considered and rejected."[15/]

III. DISCUSSION

A. The Rehearing Parties Fail to Establish that the Commission's Approach to Allocating the Procurement Obligation Adopted in D.26-02-057 Violates Section 397 or the Requirement to Offer Findings in Support of the Decision

In D.26-02-057, the Commission ordered procurement of new reliability resources to meet an approximately 6,000 megawatt ("MW") net qualifying capacity ("NQC") need between 2028 and 2032.[16/] The decision allocates procurement responsibility for the 6,000 MW NQC on a load share basis, consistent with the load-based allocation approach applied in the MTR Decision.[17/]

In the AFR, the Rehearing Parties assert that the Commission's assignment of a portion of the procurement obligation adopted in D.26-02-057 to ESPs violates Section 397, which requires allocation of procurement need 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."[18/] The Rehearing Parties assert that D.26-02-057 improperly fails to identify how ESPs contribute to the system conditions creating the need for the procurement obligation adopted in the decision.[19/] This is demonstrably untrue.

15/ *Id*.

16/ D.26-02-057, Ordering Paragraph ("OP") 1.

17/ *Id*., p. 44.

18/ AFR, pp. 5-9.

19/ *Id*. at 5 ("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.").

In adopting the allocation approach used in D.26-02-057, the Commission offered the following conclusions regarding the contribution of ESPs to the overall need for new system resources:

- "We note that *all customers contribute to the overall need* to add resources to meet reliability standards."[20]
- "[W]e agree . . . that all customers and providers benefit from a reliable electric system."[21]
- "[All] LSEs should be required to procure for the reliability needs."[22]
- "[A]ll LSEs must serve customers and contribute to the procurement needed to meet reliability standards."[23]

Moreover, in the MTR Decision, which is expressly referenced in D.26-02-057 and provides the template for the allocation approach adopted in the decision,[24] the Commission expressly acknowledged the requirements of Section 397 and found that *"[w]ith these requirements in mind*, to date we have allocated procurement requirements to all LSEs based on load share, because we have not made any findings that any LSE has created any differential need for system integration resources."[25] In other words, the Commission found that all LSEs contributed equally to the need for new resources and therefore that Section 397 did not require that any LSE be exempted from the obligation to procure the resources necessary to ensure system reliability. While the Commission did consider an alternate approach for allocating procurement need (*i.e.*, the "contract position method") in the MTR Decision, it concluded that it would be necessary to "do more work to design and vet the finer points of [the] methodology"

---

[20] D.26-02-057, p. 43 (emphasis added).

[21] *Id*.

[22] *Id*.

[23] *Id*., p. 123.

[24] *See id*., p. 44.

[25] *See* D.21-06-035, p. 52 (emphasis added).

before it could be considered for adoption.[26/] It further determined that "[a]t present, the system integration needs are not attributable to any particular LSE as distinguished from any other LSE," and further that "[b]y allocating procurement responsibility to all LSEs, we are ensuring fair distribution of costs across the customer base, for system integration resource."[27/]

Thus, the Commission found that the load-based allocation approach used in the MTR Decision (and again in D.26-02-057) was compliant with Section 397 since it was *not* the case that specific LSEs had "created the need" for the procurement ordered in the decision. The Rehearing Parties incorrectly assert that the Commission failed to comply with Section 397 in the MTR Decision and instead deferred and later abandoned the attempt to do so: "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.' This work was never completed."[28/] This claim is clearly erroneous. As noted above, the Commission expressly noted the requirements of Section 397 and concluded that there was not a need to develop an alternate allocation methodology since the resource need identified in the MTR Decision was not attributable to any particular LSE.

Importantly, the Commission observed in the MTR Decision that if it determined in the future that an identified resource need *was* attributable to a particular LSE, "we would need to develop methodologies to allocate the responsibilities differentially."[29] However, the Commission made no such determination in D.26-02-057. Indeed, it concluded just the opposite, finding that *all* customers contribute to the overall need to add resources to meet the procurement

---

[26/] *Id.*, p. 53

[27/] *Id.*

[28/] AFR, p. 9.

[29/] D.21-06-035, p. 52.

need identified in the decision. The logic of the Commission's argument is plain: In order to preserve system reliability and ensure that there is adequate capacity available to allow all LSEs to satisfy their RA requirements – *i.e*., "enough to go around" – it is necessary for all LSEs to contribute to enlarging the pool of available capacity resources. The Rehearing Parties' argument is based on the flawed premise that the resources ESPs use to meet their customers' RA requirements are earmarked or assigned in perpetuity to serve DA customers and that the obligation to enlarge the *total* pool of resources in order to meet the *overall* need identified by the Commission as being necessary to ensure grid reliability must be borne exclusively by customers of other LSEs, even though ESP customers plainly benefit from preservation of system reliability, as well as protection from scarcity market conditions.

Thus, the claim by the Rehearing Parties that the Commission committed legal error by ignoring the requirements of Section 397 and by failing to support the decision with adequate findings is entirely without merit. The discussion in D.26-02-057 of the Commission's reasons for rejecting the assertion that ESPs should be exempted from the procurement obligation adopted in the decision – particularly when read in concert with the discussion contained in the MTR Decision, which is explicitly referenced in D.26-02-057 – makes clear that the Commission considered and complied with the requirements of Section 397. Likewise, it is clear from the discussion included in D.26-02-057 what principles and facts were relied upon by the Commission in reaching its decision. Thus, the Commission appropriately considered the requirements of Section 397 and satisfied the statutory requirement to provide findings in support of its decision.

B. The Rehearing Parties Fail to Establish that the Commission's Approach to Allocating the Procurement Obligation Adopted in D.26-02-057 Will Result in Unlawful Cost Shift

The Rehearing Parties assert that the procurement allocation approach used in D.26-02-057 will result in improper cost shifting in violation of the cost indifference requirements set forth in Sections 397, 365.2, 366.2(d)(1), 366.3 and 454.52. The Rehearing Parties base this claim on the argument that because the cap on DA service has been met for two of the three investor-owned utilities ("IOUs"), "[i]n 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."[30] There are several flaws in the reasoning offered by the Rehearing Parties.

First, as noted above, the Commission concluded in D.26-02-057 that "*all* customers contribute to the overall need to add resources to meet reliability standards."[31] Since all customers contribute to the need to increase the available pool reliability of resources, the requirement in D.26-02-057 that all customers contribute on a proportionate basis to the cost of adding those new resources is reasonable and does not result in improper cost shift. Second, the suggestion by the Rehearing Parties that no ESP will be able to serve new load is factually incorrect. As the Rehearing Parties admit, the cap on DA service has not been met in one IOU service territory. Moreover, the Rehearing Parties focus, incorrectly, on whether ESPs as a *class* of provider will be able to serve additional load that materializes between 2028 and 2032. But

---

[30] AFR, p. 3.

[31] D.26-02-057, p. 43 (emphasis added).

the procurement requirements established in D.26-02-057 apply on an *LSE-specific* (and therefore, ESP-specific) basis. Thus, while it may be true that DA load is capped, an individual ESP's ability to serve new load is not limited by or to the load it serves during the 2026 RA program year. Accordingly, the Rehearing Parties' arguments regarding the purported cost shift caused by D.26-02-057 lack merit and should be rejected.

C. The AFR Improperly Seeks to Relitigate Issues That Were Previously Considered and Rejected by the Commission

The Commission noted in D.26-02-057 that Shell Energy North America (US), L.P. ("Shell"), one of the Rehearing Parties now sponsoring the AFR, "takes issue with allocating any procurement requirements to the ESPs until the cap on direct access load is lifted."[32/] The Commission made clear that it had given Shell's argument due consideration, noting, "[w]e understand the point made by Shell and others that the direct access load is capped," but rejected the notion that ESPs should be exempted from the obligation to procure their proportional share of the additional capacity found to be needed in the decision to support reliability.[33/] It observed that "all customers contribute to the overall need to add resources to meet reliability standards and we agree . . . that all customers and providers benefit from a reliable electric system."[34/] The Commission found on this basis that all LSEs should be required to procure new resources to ensure the availability of adequate capacity to meet system reliability needs.

The argument that ESPs should be exempted from reliability procurement requirements until the cap on direct access load is lifted was raised again by Shell and another Rehearing Party, the Alliance for Retail Energy Markets ("AreM"), in comments on the proposed decision

---

32/ *Id.*, p. 41.

33/ *Id.*, p. 43.

34/ *Id*.

("PD") ultimately adopted as D.26-02-057. The Commission, again, considered and rejected the argument that ESPs should be exempted from the procurement requirement established in the final decision The Commission observed that "all LSEs must serve customers and contribute to the procurement needed to meet reliability standards" and acknowledged that all LSEs and their customers benefit from preservation of a reliable grid.[35/]

The Commission has made clear that it will reject an AFR that "fails to demonstrate legal error [and] . . . revives the same arguments made during the proceeding . . . which the Commission already considered and rejected."[36/] A rehearing application that is "no more than an attempt to relitigate, and asks the Commission to reweigh the facts in its favor . . . [d]oes not establish legal error." Applications for rehearing are not "a vehicle for relitigation and any such attempts to relitigate factual and policy determinations of the Commission will be denied."[37/] The Rehearing Parties improperly seek to revive in the AFR arguments made previously and expressly rejected by the Commission in D.26-02-057, namely that the Commission should exempt ESPs from the obligation to procure their proportional share of the additional capacity found to be needed to support reliability. The AFR is an improper attempt to relitigate the prior determination of the Commission. Accordingly, it should be denied on that basis.[38/]

[35/] *Id*. at 123.

[36/] D.14-06-054, p. 3.

[37/] *Id.*

[38/] *See id*.

D. The AFR's Request to Modify D.21-06-033 Adopted in R.19-03-009 Should be Rejected as an Improper Collateral Attack

The AFR proposes as one potential form of relief that the Commission "expeditiously reconsider Decision 21-06-033, that rejected reopening of Direct Access, and issue a new positive recommendation to the Legislature."[39/] If the Commission concludes that the AFR should be granted (which it should not), the Commission should reject this proposed remedy as an impermissible collateral attack on D.21-06-033.

Section 1709 of the Public Utilities Code establishes that "[i]n all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive." Under Commission Rules, parties may challenge a Commission determination only by filing an application for rehearing or a petition for modification.[40/] Collateral attacks on Commission decisions are prohibited.[41/] The California Supreme Court has observed that the "conclusiveness arises by operation of law. It is the order and not the reasons for it that establishes its effectiveness."[42/] Adherence to this principle is necessary to protect the integrity of the Commission's decision-making process and to preserve regulatory certainty.

The Commission has defined a collateral attack as "an attempt to invalidate the judgment or order of the Commission in a proceeding other than that in which the judgment or order was rendered."[43/] In D.07-05-033, for example, the Commission concluded that a complaint brought against a water service company alleging improper rates amounted to a challenge of rates and ratemaking issues already decided in a general rate case. The Commission noted that

---

39/ AFR, p. 4.

40/ *See* Rules 16.1 and 16.4.

41/ *See, e.g.* D.08-04-063, D.07-10-015, D.07-04-017, D.07-03-047.

42/ *People v. Western Air Lines, Inc.*, 42 Cal.2d 621, 633 (1954).

43/ D.07-04-017, p. 8.

"Complainant essentially disagrees with our ratemaking methods for water customers . . . However, the disagreement was not raised in the proper proceeding, and it was raised in an untimely manner."[44/] Accordingly, the Commission determined that the complaint had properly been dismissed as "an impermissible collateral attack on an earlier Commission decision."[45/]

The same analysis applies in the instant case. The Rehearing Parties' proposal to modify the Commission's findings in a decision issued nearly five years ago in a different proceeding is improper and must be rejected. The instant proceeding is not the appropriate venue for raising concerns regarding the determinations made in D.21-06-033.[46/] Accordingly, the proposal to reconsider D.21-06-033 in the instant proceeding should be rejected.

IV. CONCLUSION

The Rehearing Parties have failed to meet their burden of proving that the Commission's load based approach to allocating the procurement obligation adopted in D.26-02-057 constitutes legal error. In addition, the AFR's proposed remedy of modifying D.21-06-033 to express Commission support for removal of the cap on DA service must be rejected as an improper collateral attack. For the reasons set forth herein, the AFR should be rejected in its entirety.

Respectfully submitted this 21st day of April 2026.

/s/ *Aimee M. Smith*
AIMEE M. SMITH
8330 Century Park Court, CP32
San Diego, CA 92123
Telephone: (619) 207-8846
E-mail: amsmith@sdge.com
Attorney for
SAN DIEGO GAS & ELECTRIC COMPANY

44/ D.07-05-033, p. 6.

45/ *Id.* at p. 5.

46/ The Rehearing Parties are also party to a Petition for Modification of Decision 21-06-033 filed in R.19-03-009 on April 6, 2026.