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

Order Instituting Rulemaking to Implement Senate Bill 237 Related to Direct Access	Rulemaking 19-03-009 (Filed March 14, 2019)

RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) IN OPPOSITION TO THE PETITION FOR MODIFICATION OF DECISION 21-06-033

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I. INTRODUCTION AND SUMMARY

In accordance with Rule 16.4(f) of the Rules of Practice and Procedure ("Rules") of the California Public Utilities Commission ("CPUC" or "Commission"), Pacific Gas and Electric Company ("PG&E") respectfully submits this response to the Petition for Modification ("PFM") filed on April 6, 2026 by the Alliance for Retail Energy Markets, Coalition of California Large Energy Users, Direct Access Customer Coalition, the Regents of the University of California, and Shell North America (US) L.P., and Western Power Trading Forum (collectively, the "Joint Parties").

The Joint Parties filed the PFM together with an Application for Rehearing ("AFR") of Decision ("D.") 26-02-057, an Integrated Resource Planning proceeding decision ordering all load serving entities ("LSE"), including electric service providers ("ESP"), to engage in procurement of new clean energy resources to meet anticipated system reliability needs (the "IRP Decision").[1] In the PFM and its companion AFR, the Joint Parties allege that the IRP Decision suffers legal infirmities and propose multiple remedies, including modifications to D.21-06-033 ("the Decision") requiring the Commission to issue a recommendation to the Legislature to remove the direct access ("DA") cap for non-residential customers.[2]

1/ PFM, pp. 3-4.

2/ PFM, p. 5.

The PFM must be denied because it (1) fails to satisfy Rule 16.4(b) and (d); (2) seeks relief that the Commission no longer has the statutory authority to provide; and (3) improperly seeks new factual and legal determinations on issues the Decision expressly declined to resolve. Each of these factors are independently sufficient grounds for the Commission to deny the PFM. First, the PFM plainly fails to adequately meet the criteria of Rule 16.4(b) and (d), as the PFM comes five years after the Decision. The Joint Parties claim that there are "changed facts" yet the PFM relies on unsupported factual assertions, including arguments previously presented by the parties or their predecessors in an Application for Rehearing of the Decision. Next, even if the Commission were to overlook the PFM's procedural infirmities, the Commission's express statutory authority to issue a recommendation to the Legislature concerning potential DA reopening has been repealed. Given the PFM's procedural and legal deficiencies, the Commission need not consider underlying substance of the PFM. But if it were to do so, the PFM must be denied on these grounds as well, given the PFM improperly requests that the Commission make findings and conclusions on matters that the Decision never resolved and must not be resolved in the first instance by a PFM.

II. BACKGROUND OF THE DECISION

In 2019, the Commission initiated Rulemaking 19-03-009 to implement Senate Bill ("SB") 237 (2018).[3] SB 237 amended Section 365.1 of the California Public Utilities Code to require the Commission to take two discrete actions by specific deadlines, including issuing recommendations to the Legislature concerning further reopening of DA for non-residential customers. Specifically, the statute amended Section 365.1 to add subsections (e) and (f).

Subsection (e) required that, on or before June 1, 2019, the Commission issue an order implementing a limited increase in the DA cap of 4,000 gigawatt hours allocated among the service territories of the electrical corporations, and preserving participation for then existing DA

[3]/ SB 237 (2017-2018 Reg Sess.), amending Public Utilities Code Section 365.1. All section references herein are to the California Public Utilities Code.

customers. Subsection (f) required that, on or before June 1, 2020, the Commission "shall provide recommendations to the Legislature on implementing a further direct transactions reopening schedule," subject to explicit required findings that the Commission's recommendations are consistent with the state's greenhouse gas emission reduction goals; do not increase criteria air pollutants and toxic air contaminants; ensure electric system reliability; and do not cause undue shifting of costs to bundled-service customers of an electrical corporation or to direct transaction customers. The Commission satisfied its obligation under former Section 365.1(e) to expand the DA program by issuing D.19-05-043 implementing the expansion, as well as D.19-08-004, clarifying the process for customer enrollment.

Next, the Commission satisfied its obligation under former Section 365.1(f) by evaluating whether it could appropriately recommend further DA expansion to the Legislature and determining it could not.[4] The Decision explains that the Commission determined it could not recommend DA expansion. The Decision concluded DA expansion would present an unacceptable risk to the state's long-term reliability goals.[5] The Commission further determined that, due to the procurement practices of DA providers, it was unable to ensure that DA expansion would not result in increased GHG emissions, criteria air pollutants, and toxic contaminants.[6] Because the Decision determined that the Commission could not recommend DA expansion to the Legislature, it decided it need not evaluate the issue of cost shifting or make a specific finding or conclusion regarding the issue of potential cost shifts under an expanded DA program.[7]

4/ See D. 22-12-048, pp. 6-10 (explaining how the Commission complied with its duties under SB 237).

5/ Decision, p. 2 and pp. 27-28, Findings of Fact 1-8 (describing reliability needs and the challenges DA expansion would pose on financing generation to serve those needs).

6/ Decision, p. 2.

7/ Decision, p. 21-22.

Following the issuance of the Decision, a subset of the Joint Parties (the "Rehearing Parties"),[8] filed an Application for Rehearing of the Decision. The Rehearing Parties, among other things, recognized that the Commission had already placed long-term procurement obligations on ESPs through D.21-06-035,[9] and argued that the Decision's findings lacked evidentiary support, disregarding that all LSEs are subject to identical obligations for the Commission's Resource Adequacy ("RA"), Renewables Portfolio Standard ("RPS"), Integrated Resource Planning ("IRP") and greenhouse gas ("GHG") requirements, as imposed by the Commission. D.22-12-058 denied rehearing of the Decision, explaining that the conclusions denying further reopening of DA were based on a substantial evidentiary record addressing each of the factors required by Section 365.1(f)(2). D.22-12-058 explained that the Rehearing Parties' claim of unsupported findings or lack of substantial evidentiary support was without merit. The Rehearing Parties did not file a writ of review of that Decision.

III. THE PFM MUST BE DENIED

The PFM seeks to completely reverse the Commission's decision to recommend against DA expansion based on alleged changes in market conditions, load growth patterns, and the evolving role of ESPs. The PFM seeks the Commission to revisit its prior conclusion and recommendation on DA expansion. As discussed below, the PFM fails as a matter of law and procedure. But even if the Commission were inclined to revisit the issue of DA expansion (and it need not), any Commission decision about a major alteration in the retail electricity market—which could affect millions of customers in California—should take place through a thorough

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8/ The Rehearing Parties comprise of Alliance for Retail Energy Markets, California Large Energy Consumers Association, Direct Access Customer Coalition, Energy Producers and Users Coalition, Shell Energy North America (US), L.P., and Western Power Trading Forum.

9/ Application of the Alliance for Retail Energy Markets, California Large Energy Consumers Association, Direct Access Customer Coalition, Energy Producers and Users Coalition, Shell Energy North America (US), L.P. and Western Power Trading Forum for Rehearing of Decision 21-06-033 (July 29, 2021) (Rehearing), pp. 17-18, available at: <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M396/K196/396196718.PDF> (accessed May 5, 2026).

process wherein all interested parties have notice and an opportunity to be heard, with any decision rendered considering the input of all parties, such as through a rulemaking, not through a PFM process.

A. PFM Fails to Meet the Requirements of Rule 16.4

Rule 16.4 provides specific rules for petitions for modifications. The Commission's authority to revise issued decisions through a PFM is derived from Section 1708 and is discretionary.[10] As the Commission has explained, revisions to its decisions through the PFM process must be exercised with care, justified by extraordinary circumstances, and remain consistent with principles of res judicata because its authority "represents a departure from the standard that settled expectations should be allowed to stand undisturbed."[11]

Notwithstanding that the relief requested by the Joint Parties would require the Commission to make a significant policy determination, and any such determination cannot be reasonably construed to be "exercised with care" if issued through a PFM pleading and party responses to it, the Commission denies petitions for modification that do not comply with the requirements of Rule 16.4.[12] The PFM fails to meet Rule 16.4(b) because it is based on unsubstantiated allegations by the Joint Parties. The PFM also fails to meet Rule 16.4(d) because the Joint Parties do not adequately justify why the PFM could not have been filed within a year of issuance of the Decision. Each deficiency is independently sufficient for the Commission to deny the PFM.

1. The PFM Fails to Meet the Requirements of Rule 16.4 (b)

Under Rule 16.4(b), a petition for modification must include citations to factual information that is in the proceeding record or may be taken under notice.[13] The petitioner is also required to include affidavits or declarations to any factual allegations that are raised in the

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10/ D.24-05-043, pp. 7-8 (citing an explanation in PG&E Corp. v. Public Utilities Com. (2004) 118 Cal.App.4th 1174, 1215 that [California Pub. Util. Code Section 1708, which authorizes the Commission to "rescind, alter, or amend any order or decision made by it" is permissive].

11/ D.25-10-004, p. 7; See also D.24-05-043, pp. 5-6 (recognizing the Commission's statutory authority to grant petitions for modification derives from Section 1708).

12/ See, for example, D.25-11-006, D.25-10-007, D.26-02-036, D.25-05-043 (all denying Petitions for Modification on grounds that the Petitions failed to comply with a provision or multiple provisions of Rule 16.4).

13/ Rule 16.4(b).

petition.[14] Here, the PFM alleges material factual information relevant to the Joint Parties' requests for relief. However, the Joint Parties do not provide an affidavit or declaration for all factual allegations necessary to make a decision on this issue, including, but not limited to the following:

- ESPs cannot just 'rely on CAISO system power' to meet their needs for RA, they must hold RA contracts like everyone else, and must also contract for local capacity or it must be contracted for on their behalf. [15]
- Given that RPS requirements have increased significantly year-over-year, the proportion of total procurement represented by long-term RPS contracts is significant.[16]
- These storage additions have shifted the RA market from one of scarcity in 2020 to one of surplus.[17]
- As indicated above, the RA market is now in surplus.[18]
- ESPs are better suited at preventing cost shifting to existing customers than CCAs and IOUs to meet the needs of new large customers because ESPs will place such customers under dedicated contract.[19] These contracts will provide certainty to the ESPs, who can then properly finance deals to serve this load without risk to other customers and with no additional effort required from the Commission. [20]
- [..] allowing ESPs to serve new customers will add contractual certainty, enhance system reliability and insulate residential and small customers from the rate increases that could occur should the new load be served exclusively by other LSEs[21]

14/ *Id*.

15/ PFM, p. 8.

16/ *Id*.

17/ PFM, p. 13.

18/ *Id*.

19/ PFM, p. 16.

20/ *Id*.

21/ *Id*.

The declaration provided in support of the PFM specifically addresses limited statements concerning (1) the expertise of the declarant; (2) the purpose of the declaration; (3) Commission actions in the IRP docket; (4) statutory amendments related to IRP procurement (5) the existence IRP Decision and Rehearing Application; (6) alleged cost shifts resulting from the IRP Decision; (7) the inability of ESPs to enroll new customers; and (8) a statement that the PFM could not have been filed within a year of issuance of the Decision. The declaration does not meaningfully speak to the factors the Commission considered in making its recommendation to not reopen DA. Even if the Joint Parties supported the foregoing alleged facts by a clear declaration or affidavit of support, PG&E contests that any Commission determination concerning the potential transformation of the energy procurement landscape should not be made with only the factual support of one individual declarant.

Even so, the expansive factual findings and legal conclusions the Joint Parties seek are not supported by a declaration or affidavit. For example, the Joint Parties request a Finding of Fact that "[a]llowing ESPs to serve new customers adds contractual certainty, enhance system reliability and insulate residential and small customers from the rate increases that could occur should the new load be served exclusively by other LSEs."[22] Additionally, the Joint Parties request a Conclusion of Law that "Expanding Direct Access will not create unacceptable risks to electric system reliability."[23] But the declaration does not address risks to electric reliability or ratesetting. Similarly, the Joint Parties request that the Commission issue a Conclusion of Law that "[t]he recommendation herein will not cause undue shifting of costs to bundled service customers of an electrical corporation or to direct transaction customers."[24] Yet, the declaration does not at all address the issue of bundled service customer cost shifting. On these grounds, the PFM must be denied for failing to meet the requirements of Rule 16.4(b).

2. The PFM Fails to Meet the Requirements of 16.4 (d).

The PFM also fails to meet the requirements of Rule 16.4(d), which requires, if more than one year has elapsed since the issuance of a decision, that the petitioner explains why the petition could not have been presented within one year of the effective date of the decision. Here, the

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22/ PFM, Exhibit A, proposed Finding of Fact 8.

23/ PFM, Exhibit A, proposed Conclusion of Law 1.

24/ PFM, Exhibit A, proposed Conclusion of Law 2.

Joint Parties assert that "the total impact of the decision was not clear until recently."[25] The Joint Parties further argue that subsequent policy actions by the Commission such as the issuance of the IRP Decision, and of the Legislature, are cause for a late-filed PFM.[26] However, policy evolution over time is not a sufficient justification under Rule 16.4(d).[27] The Joint Parties further allege that statutory revisions enacted in 2023 clarified the Commission's authority to order ESPs to pursue long-term procurement.[28] Yet, in 2021, when the Rehearing Parties filed an Application for Rehearing, they cited the Commission's long-term procurement orders imposed on ESPs as a factor in support of reversal.[29] Further IRP procurement orders were imposed on all LSEs in 2023. Even if the Joint Parties received clarification in 2023 concerning the Commission's legal authority to order ESP procurement, no PFM was submitted within a year of this event. The Commission should dismiss the PFM as untimely.

B. The Legislature Revoked the Commission's Authority to Recommend DA Reopening

Even if the PFM were not procedurally deficient, it should be denied as a matter of law because the Commission no longer has any obligation under Section 365.1(f) to recommend reopening DA to the Legislature. The duty imposed by Section 365.1(f) was discharged. Further, following issuance of the Decision, statutory amendments enacted by Assembly Bill (AB) 1373 (Gacia, Stats. 2023) removed Section 365.1(f) from the Public Utilities Code.[30] The legislative history confirms that this deletion was intended to remove a completed statutory obligation.[31] If the Legislature had intended for the Commission to refresh its recommendation, it would not have eliminated its obligation to do so.

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[25]/ PFM, p. 5.

[26]/ *Id*.

[27]/ D.26-02-036, p. 5.

[28]/ PFM, p. 3.

[29]/ Rehearing, pp. 17-18 (citing to D.21-06-035, in which the Commission ordered long-term procurement).

[30]/ AB 1373 (2023-2024 Reg Sess.) is the same legislative vehicle that the Joint Parties clarified the Commission's authority to order ESPs to procure long term contracts, see PFM, p. 3.

[31]/ AB 1373, Senate Floor Analyses, p. 5 (stating the bill "includes additional clean-up of the Section 365.1 of the Public Utilities Code, including deletion of language referencing an already produced report required in SB 237 (Hertzberg, Chapter 600, Statutes of 2018")), available at: <file:///C:/Users/m2o3/OneDrive%20-%20PGE/Desktop/R.19-03-009/202320240AB1373_Senate%20Floor%20Analyses.pdf> (accessed May 5, 2026).

As explained above, statutory amendments authorized by SB 237 made the Commission's obligation to issue recommendations to the Legislature regarding the reopening of DA were limited and time-bound. Under former Section 365.1(f) the Commission's recommendation to the Legislature was due on or before June 1, 2020, and any recommendation was to be conditioned on specified findings related to greenhouse gas emissions, air quality, reliability, and cost shifting.

The Legislature did not mandate the Commission to make recommendations related to DA reopening on an ongoing or discretionary basis. As the Commission explained when denying the AFR on the Decision,

> It should also be noted that, after receiving the Commission's findings and recommendations in June 2021 in D.21-06-033, almost a year and a half ago, the Legislature could have decided to move forward with a further reopening of DA and could have drafted legislation to that effect. It has not done so. [32]

Roughly five years later, the Legislature still has not done so. Instead, in the nearly six years since the Commission determined that the conditions placed on it by legislation to recommend DA expansion could not be met and its statutory deadline elapsed, changes in law removed the Commission's authority to grant the relief requested by the PFM. The PFM should also be denied on those grounds.

C. The PFM Improperly Seeks Initial Factual and Legal Conclusions Never Addressed by the Decision

Finally, the issue of whether the energy supply landscape in California should be transformed through DA expansion is not a simple issue appropriate for resolution through a PFM. As the Commission has recently explained, the Commission's rules for petitions for modification are intended to be narrow, and broad policymaking changes are meant to be considered in Rulemaking proceedings.[33] Here, the Joint Parties, including a newly formed party, are requesting the Commission render a decision to recommend broad changes to the LSE landscape in California. Even if the Commission were to consider this issue, and it should not

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[32]/ D. 22-12-046, p 10.

[33]/ *Id*. See also D.20-04-005, p. 11, Conclusions of Law 1 and 3(denying a petition for modification on procedural grounds, and referring issues to a Rulemaking).

based on the deficiencies of the PFM, it should consider the issue with adequate record development and adherence to due process principles with the input of all interested parties, which may include other newly formed parties.

Further problematic is that the PFM involves broad policymaking questions the Commission never resolved in the underlying Rulemaking. Thus, even if the Commission were to overlook the multiple procedural deficiencies of the PFM and disregard the Legislature's affirmative revocation of its statutory obligation to make a recommendation concerning the reopening of DA, the relief requested by the PFM is inappropriate because the Joint Parties are not merely requesting the Commission to *revise* the Decision, they are asking the Commission to make new factual and legal conclusions that it expressly declined to make in the underlying Rulemaking. A petition for modification should not be used to obtain initial Commission determinations on contested factual and legal issues expressly left undecided in the underlying decision. The Commission must address these issues, if at all, through a process providing for adequate notice and an opportunity to be heard, such as in an appropriate Rulemaking process.

In the Decision, consistent with former Section 365.1(f), the Commission evaluated whether a further expansion of DA could be supported by required affirmative findings that:

(A) The recommendations are consistent with the state's greenhouse gas emission reduction goals;

(B) The recommendations do not increase criteria air pollutants and toxic air contaminants;

(C) The recommendations ensure electric system reliability; and

(D) The recommendations do not cause undue shifting of costs to bundled service customers of an electrical corporation or to direct transaction customers.

The Commission correctly interpreted former Section 365.1(f) to require that *all* four findings were necessary for it to recommend a further expansion of DA.[34] The reasoning behind the Commission's conclusion that it could not recommend further DA expansion was based on two of the four findings not being met. Because the Commission recommended against DA expansion based on the inability to make two of the four required findings to recommend reopening, it appropriately determined that it was not necessary to opine on whether the

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[34]/ Decision, pp. 22, 29, Conclusions of Law 3 and 4.

remaining two required findings were satisfied.[35] To make its finding on two of the four issues addressed in the underlying Decision, the Commission's analysis was informed by a workshop, a Draft and Final Staff Report and multiple rounds of informal and formal party comments addressing procurement obligations, system reliability, and cost allocation across LSEs.[36]

Questions concerning those remaining two issues, including whether undue shifting of costs to bundled service customers of an electrical corporation or to direct transaction customers would result from further expansion of DA, are necessarily complex and clearly unsettled.[37] These issues were contested in the underlying rulemaking and Decision did not consider the underlying record to make a determination on these questions. Instead, the Decision deliberately declined to reach these issues once other statutory prerequisites for a DA reopening recommendation could not be met. The remaining two issues were contested in the underlying Rulemaking,[38] and cannot be initially determined by the Commission through a PFM, particularly one asserting various unsubstantiated factual claims. For this reason, the PFM should be denied.

IV. CONCLUSION

The PFM fails to satisfy the Commission's procedural rules, seeks relief that the Legislature has revoked the Commission's statutory authority to grant, and requests initial determinations on contested issues (i.e., two of the remaining findings required under former Section 365.1(f) that were never addressed in the underlying Decision). The PFM should be denied on any of these grounds.

35/ *Id*., Conclusion of Law 4.

36/ See D.22-12-058, pp. 2-5 (describing procedural history and evidentiary record that was relied upon by the Commission to render the Decision).

37/ In the past decade, the issue of cost shifting because of load departure has remained controversial. The Commission has had two rulemakings addressing matters related to cost shifting, R.17-06-026, which was an active proceeding for six years, and R.25-02-005, which is currently open.

38/ See Decision, pp. 12-14.

Respectfully Submitted,

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