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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)**

CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION RESPONSE IN SUPPORT OF PETITION FOR MODIFICATION

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Pursuant to Rule 16.4 of the California Public Utilities Commission (CPUC or Commission) Rules of Practice and Procedure, the California Large Energy Consumers Association (CLECA)[1] respectfully submits this response in support of the April 6, 2026 Petition for Modification (Petition)[2] of Decision (D.) 21-06-033 (the DA Decision).[3]

I. INTRODUCTION

The Commission should grant the Petition and modify the DA Decision and recommend that the Legislature remove the cap on Direct Access (DA). The Petition does not merely reargue policy disagreements with the Commission's 2021 recommendation. Rather, it identifies post-

[1] CLECA member companies produce goods essential for daily life, including critical infrastructure, oxygen for hospitals, and food distribution. CLECA members represent the steel, cement, industrial and medical gas, beverage, minerals processing, cold storage, and pipeline transportation industries. Their aggregate electric demand is about 500 Megawatts, which is equivalent to the electricity consumption of approximately 470,000 average California households. CLECA members are large, high load factor and high voltage industrial electric customers in California for whom the price of electricity is essential to their competitiveness and for whom the reliability of electricity service is critically important. For both reasons, CLECA member companies have participated for decades in the Base Interruptible Program (BIP), providing reliability demand response to the grid in times of need. (For more information, please go to CLECA.org).
[2] *Petition For Modification Of Decision 21-06-033 By The Alliance For Retail Energy Markets, California Coalition Of Large Energy Users, Direct Access Customer Coalition, Regents Of The University Of California, Shell Energy North America (US), L.P. And Western Power Trading Forum,* R.19-03-009, Apr. 6, 2026 (Petition).
[3] D.21-06-033, *Decision Recommending Against Further Direct Access Expansion*, R.19-03-009, Jun. 29, 2021 (DA Decision).

2021 statutory and regulatory developments that materially alter the bases for the Commission's recommendation against DA expansion. Importantly, the Petition also reflects that the present-day consequences of the DA cap's constraints on Energy Service Providers (ESPs) now threaten to frustrate, rather than protect, the Commission's reliability, affordability, and climate change objectives.

CLECA members are large industrial electricity customers whose operations are energy-intensive, capital-intensive, and exposed to regional and global competition. For these customers, electricity costs, procurement structure, and access to competitive supply options are material to long-term investment and operating decisions. CLECA therefore has a direct interest in the Commission's recommendation to the Legislature regarding whether and how the DA enrollment cap should be modified.

II. RESPONSE

A. The Petition Shows that the 2021 Decision Rested on Reliability and Emissions Concerns that No Longer Hold

In 2021, the Commission recommended against further DA expansion because, based on the record before it at the time, it could not make the findings required by Public Utilities Code section 365.1.[4] Specifically, based on the "ESPs' past pattern and practice of procuring new generation resources," the Commission concluded that expanding DA to all non-residential

[4] D.21-06-033 at Conclusion of Law (CoL) 3; *see also* Id. at 6 ("The Required Findings, to be considered when developing the Direct Access Recommendations, are:
(A) The recommendations are consistent with the state's greenhouse gas (GHG) emission reduction goals.
(B) The recommendations do not increase criteria air pollutants and toxic air contaminants.
(C) The recommendations ensure electric system reliability.
(D) The recommendations do not cause undue shifting of costs to bundled service customers of an electrical corporation or to direct transaction customers.").

customers would present a risk to electric system reliability.[5] The Commission also found that, based on then-current procurement practices, DA expansion could result in increased greenhouse-gas (GHG) emissions compared to the status quo.[6]

The Petition demonstrates that the underlying conditions supporting those findings and conclusions have materially changed. It points to subsequent statutory changes clarifying the Commission's authority to require ESPs to pursue long-term procurement and further align ESP's planning and procurement obligations with those of other load-serving entities (LSEs).[7] The Petition further demonstrates that, under the current regulatory framework, ESPs have demonstrated compliance with key Resource Adequacy (RA), Renewable Portfolio Standard (RPS), and Integrated Resource Planning (IRP) requirements.[8]

These changed facts go directly to the very procurement and planning concerns that formed the basis of the DA decision. The Commission's 2021 recommendation was grounded in a lack of assurance that expanding DA would be supported by sufficiently uniform, enforceable obligations to protect reliability and emissions goals. The Petition shows that the legal and

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[5] D.21-06-033 at 13-15, 19-20, CoL 1.
[6] D.21-06-033 at 16-18, 20-21, CoL 2.
[7] Petition at 9-10, 12-16; *Declaration Of Daniel W. Douglass In Support Of Petition For Modification* (Petition Declaration) (3. Since the issuance of D.21-06-033 (Decision), the Commission has engaged in extensive efforts in its Integrated Resource Planning (IRP) proceedings in Rulemakings (R.) R.20-05-003 and R.25-06-019. These efforts occurred more than one year after the Decision was issued.4. Further, AB 1373 (Chapter 367 of 2023) modified the IRP statutes, specifically Section 454.51, to clarify the Commission's ability to order ESPs to pursue procurement of long-term contracts. The bill addressed many of the CPUC's concerns with its ability to order ESPs to pursue long term procurement as it equalized the treatment of all LSE types concerning the procurement of both resource adequacy and integrated resource planning. This legislation and the Commission's subsequent implementation efforts occurred more than one year after the Decision was issued.)
[8] Petition at 14-15 (citing Energy Division, *Report on Transactability within the Slice of Day Resource Adequacy Framework*, Feb. 2026 at 15; Energy Division, *Summary of Compliance with Integrated Resource Planning (IRP) Order D.19-11-016 and Mid Term Reliability (MTR) D.21-06-035 Procurement*, Aug. 2023 at 14), 17-18.

regulatory framework has since matured in ways that materially reduce those concerns. In light of those developments, the factual basis for the Commission's 2021 recommendation no longer holds in the same way, and reconsideration is warranted.

B. The State's Changed Load-Growth Outlook Further Supports Modification

The Petition reflects that, since 2021, California's load-growth outlook has "fundamentally changed," shifting from incremental growth to rapid growth largely driven by new large loads associated with electric-vehicle charging, data centers, and fuel switching.[9] As the Petition aptly observes, the "largest reliability challenge on the horizon" is meeting this new load growth,[10] and the DA program is well-suited to help meet it.[11]

The changed load-growth outlook is particularly significant because the Commission's own 2021 record recognized that DA can provide meaningful benefits for large customers. The 2021 Staff Report found that DA providers have been able to offer power at a significant cost advantage to IOUs, and acknowledged that lower rates "may be particularly important to large commercial and industrial customers for whom energy is a major component of overall costs."[12] It also recognized that DA can allow large customers to implement "a unified energy management plan across jurisdictional boundaries and can facilitate the pursuit of corporate or institutional GHG goals."[13]

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[9] Petition at 11 (citing California Energy Commission, *2025 IEPR Forecast, Updated Results*, Presented to the Demand Analysis Working Group Jan. 5, 2026).
[10] Petition at 16.
[11] Petition at 11-12.
[12] D.21-06-033 Appendix A, *Final Report Providing an Assessment of Expansion of Direct Access Pursuant to Senate Bill 237*, Sep. 14, 2020 (revised May 7, 2021) (2021 Staff Report) at 10.
[13] 2021 Staff Report at 10.

The Petition shows why those recognized benefits carry greater significance under current conditions. In a period of rapid growth in large commercial and industrial load, DA's bilateral contracting model can provide dedicated procurement arrangements tailored to the load profiles, contracting horizons, and risk profiles of large customers.[14] The Petition explains that allowing ESPs to serve this new load would "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."[15] The DA cap, however, prevents ESPs from serving this additional load,[16] including incremental load associated with the expansion or electrification of existing DA customers' operations.

Against the backdrop of the post-2021 legal and regulatory developments discussed in the Petition, the changed load-growth outlook substantially weakens the DA Decision's rationale for maintaining the DA cap. The Commission can no longer assume that restricting DA is necessary to protect reliability and emissions objectives; California now faces significant growth in the very type of load for which DA offers recognized procurement flexibility and clean-energy benefits. The Petition therefore supports a strong expectation that the Commission would evaluate DA expansion differently today.

[14] Petition at 11-12.
[15] Petition at 16.
[16] Petition Declaration ("7. ESPs cannot enroll new customers in most of the state and cannot meaningfully serve new large loads, including data centers and electric vehicle charging stations.").

C. Worsening Electric Affordability Pressures Heighten the Significance of the Changed Load-Growth Outlook and the DA Cap's Impacts on Industrial Customers

The shift toward rapid growth in large commercial and industrial load is especially consequential given that electric affordability concerns have reached new heights since 2021. This is particularly important for energy-intensive, trade-exposed (EITE) customers, whose retention, expansion, and electrification decisions often turn on electricity cost, procurement flexibility, and long-term risk allocation.

The 2021 Staff Report acknowledged that "many [DA] customers choose [DA] in order to lower their overall energy bills," and that ESPs "can provide customers with electricity services, such as load management, that are tailored to the customer's specific needs."[17] It further recognized that, for industrial customers "with some degree of locational freedom, the search for less expensive electricity could lead them to consider moving production out of California," and that DA may help mitigate that risk.[18]

The Petition shows that these affordability-driven siting pressures are materializing in practice. It states that some energy-intensive customers have located new facilities or projects outside California because additional load cannot be served under DA, and because "California's electricity rates are simply uncompetitive with our neighboring states."[19] These decisions are occurring in a materially different environment than in 2021, making the availability of flexible, cost-competitive procurement options increasingly determinative of where new load is located

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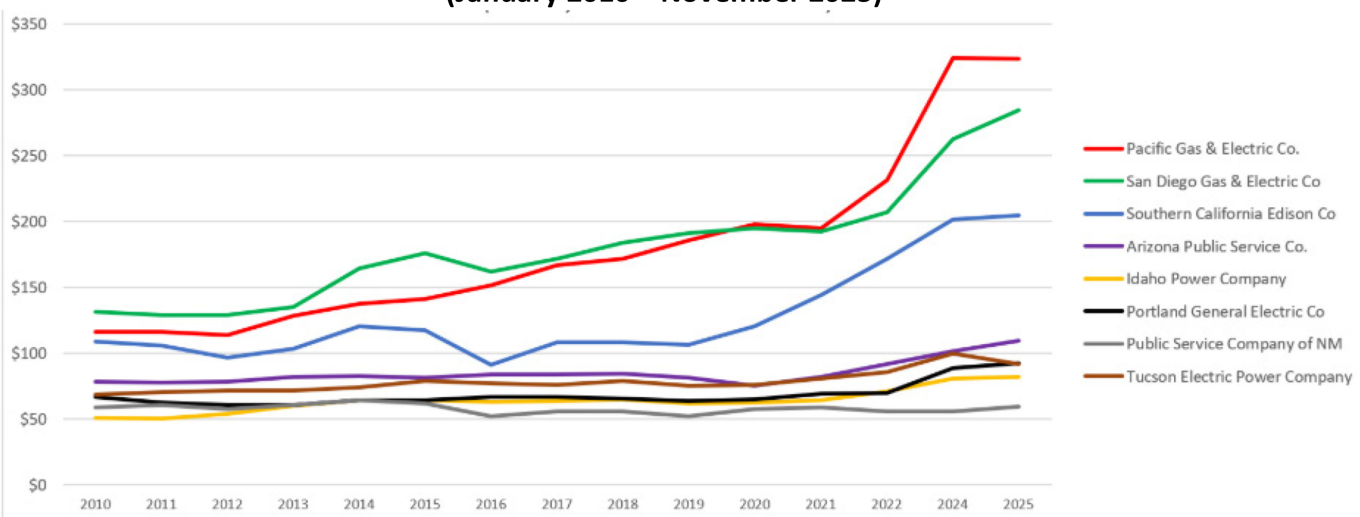
[17] Staff Report at 10.
[18] Petition at 10.
[19] Petition at 20.

and how existing EITE customers in California evaluate expansion or decarbonization investments.

Critically, data from the Energy Information Association (EIA) show that the disparity between California's electric rates for industrial sector customers has grown dramatically since 2021.

Industrial Sector Average Electricity Rate by Utility ($/MWh) [20]
(January 2010 – November 2025)



This widening cost differential provides important context for the siting decisions described in the Petition and helps explain why limits on access to DA now carry greater practical consequences than they did at the time of the 2021 DA Decision.

[20] U.S. Energy Information Agency (EIA), EIA-861M, *Monthly Electric Power Industry Report* (Monthly sales to ultimate customers by state and utility for all sectors (Industrial columns) Jan. 2010 - Nov. 2025). (EIA is a statistical agency of the U.S. Department of Energy, and the cited industrial rate series is an official U.S. government publication. It therefore qualifies as a "matter that may be officially noticed" within the meaning of Rule 16.4(b) and is also subject to judicial notice under Cal. Evid. Code § 452(b), (c), (h)).

Given expectations for rapid growth in large commercial and industrial load, including incremental load associated with "fuel switching,"[21] these affordability pressures magnify the impact of the DA cap. As electricity costs rise relative to other states, access to flexible, competitive retail procurement options becomes a more salient factor in where new load is sited, and whether existing EITE customers expand, electrify, or decarbonize in California rather than elsewhere. Viewed in this light, the Petition shows that siting concerns previously identified by the Commission have escalated in both scale and impact, underscoring that the negative policy consequences of maintaining the DA cap are more pronounced today than they were in 2021.

D. The Petition's New Facts and Circumstances Would Support a Different Finding under Pub. Util. Code. Section 365.1(f)(2)(A)

These consequences bear directly on the DA Decision's determination under Public Utilities Code section 365.1(f)(2)(A), which required that the Commission's recommendation be consistent with the State's GHG emission-reduction goals. In 2021, the Commission's GHG analysis focused primarily on procurement mix, reliance on unspecified power, long-term contracting practices, and portfolio characteristics across LSEs.[22] While the Staff Report acknowledged that DA expansion could reduce competitive pressures on industrial customers looking to remain and expand in California, the DA Decision did not consider the emissions leakage implications of the cap's constraints on retail choice.

California's climate policy has long recognized the importance of avoiding emissions leakage alongside achieving in-state emissions reductions. This was affirmed by the passage of Assembly Bill (AB) 1207 last year, which directs the California Air Resources Board (CARB) to

[21] Petition at 11.
[22] D.21-06-033 at 20-21.

"minimize leakage."[23] The Commission has recognized in other contexts that emissions leakage occurs when economic activity shifts out of California to jurisdictions with less stringent climate policies, resulting in apparent reductions in California's emissions but equal or greater increases elsewhere. [24]

As noted above, the Petition shows that the DA cap has caused some energy-intensive customers to locate new facilities or projects outside California.[25] Although the Petition presents this primarily as economic harm, it also demonstrates that maintaining the DA cap may contribute to emissions leakage due to the loss of incremental energy-intensive load. If new large load that would otherwise locate in California is instead served out of state, California may observe reductions in in-state electricity demand and emissions without a corresponding reduction in total emissions. In that circumstance, emissions are shifted rather than reduced. Because this leakage risk was not expressly contemplated in the DA Decision's emissions analysis, the Petition demonstrates that maintaining the DA cap is harder to reconcile with section 365.1(f)(2)(A) than it was in 2021. Accordingly, the interaction between affordability pressures, rapid large-load growth, and out-of-state siting decisions provides additional support for modifying the DA Decision to recommend DA expansion.

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[23] Cal. Health & Safety Code § 38562(a)(9); *see also* Cal. Health & Safety Code § 38562(a)(7)(mandating consideration of "the effect of these regulations on affordability, cost-effectiveness, minimization of leakage in California,"); Cal. Health & Safety Code § 38562(c)(2)(A)(V) (ordering consideration of "the potential for environmental and economic leakage" in the setting of a price ceiling); Cal. Health & Safety Code § 38562 (c)(2)(G); Cal. Health & Safety Code§ 38562 (c)(2)(J) (directing a report by Dec. 31, 2025 on implementation progress as well as "the leakage risk posed by the regulation," with inclusion of "recommendations to the Legislature on necessary statutory changes to the program to reduce leakage including the potential for a border carbon adjustment").
[24] CPUC, *California Industry Assistance* (section titled "What is the purpose of the California Industry Assistance Credit?"), https://www.cpuc.ca.gov/industries-and-topics/natural-gas/greenhouse-gas-cap-and-trade-program/california-industry-assistance.
[25] Petition at 20.

III. CONCLUSION

For the reasons discussed above, the Petition identifies materially changed facts and circumstances that substantially weaken the bases for the Commission's 2021 recommendation against further DA expansion. The current record reflects that the procurement and planning concerns underlying the DA Decision have been materially alleviated. It also shows that maintaining the DA cap under present conditions may impede the State's ability to serve new large load, retain energy-intensive investment, and remain consistent with the State's GHG reduction goals. The Commission should therefore modify the DA Decision and recommend that the Legislature remove the DA cap.

Respectfully submitted,

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