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R2506019

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Oversight of Electric Integrated Resource Planning and Procurement Processes.	Rulemaking 25-06-019 (Filed June 26, 2025)

RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) TO THE APPLICATION FOR REHEARING OF DECISION 26-02-057

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Dated: April 21, 2026

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I. INTRODUCTION AND SUMMARY

In accordance with Rule 16.1(d) of the Rules of Practice and Procedure of the California Public Utilities Commission ("CPUC" or "the Commission"), Pacific Gas and Electric Company ("PG&E") respectfully submits this response to the Application for Rehearing filed 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. (collectively, "DA Advocates").[1/]

DA Advocates request rehearing of Decision ("D.") 26-02-057 ("the Decision"), which requires all load-serving entities ("LSEs"), including energy service providers ("ESPs"), to collectively procure 6,000 megawatts ("MW") of new, clean energy generation for reliability purposes between 2030 and 2032. The 6,000 MW procurement need is allocated among LSEs, including ESPs, using the same methodology the Commission has used in previous procurement

1/ The Alliance for Retail Energy Markets submitted opening comments on the OIR in this proceeding, see Rule 1.4(a)(2)(ii), and Coalition of California Large Energy Users filed a motion for party status on October 14, 2025, see Rule 1.4(a)(4). As these parties satisfy the criteria set forth in Rule 1.4(a) to obtain party status in this proceeding, they may file an application for rehearing. See Rule 16.2(a) (defining the parties eligible to file an application for rehearing). But neither the Regents of the University of California ("Regents") nor Shell North America L.P. ("Shell") satisfied the criteria set forth in Rule 1.4(a) to obtain party status. As these two entities are non-parties, they are not eligible to challenge the Decision via an application for rehearing. Rule 16.2(a). The Commission should strike these entities from the application.

orders—namely, that all LSEs are allocated a share of the procurement need based on their share of the managed peak load for a given year.

Ignoring this history (and overlooking their own failure to propose an alternative methodology for load allocation), DA Advocates now object that it is unlawful to apply this procurement order to them. The nub of their grievance is that, because the procurement order is driven in part by load growth from data centers, and they are constrained from meeting that demand, their customers are in effect subsidizing load growth and bearing disproportionate costs for this grid stability. They urge the Commission to correct this error by lifting the direct access cap.

DA Advocates have not met their burden of demonstrating that the Commission has exceeded its powers or jurisdiction or acted in a manner inconsistent with law. To the contrary, their interpretation of the Public Utilities Code 397(a)(1) is incorrect, and their allegations of violations of other statutory mandates are baseless. Even assuming, however, that DA Advocates have any legitimate grievance about the Decision's allocation methodology, the Commission may not give them the primary relief they seek. As their arguments are without merit and the relief they seek is unavailable in this proceeding, the Commission should deny the application.[2/]

II. BACKGROUND

Since 2019, the Commission has periodically required LSEs to procure new, non-emitting generation resources for system reliability purposes. In 2019, the Commission required LSEs, including ESPs, to procure 3,300 MW of incremental generation resources between 2021 and 2023.[3/] Allocation of this procurement was apportioned to specific LSEs on a managed peak load-share basis. Subsequently, in 2021, the Commission required LSEs, including ESPs, to

2/ The same day they filed this application for rehearing, DA Advocates also filed a Petition for Modification of D.21-06-033 in R.19-03-009. That Petition advances largely the same objectives DA Advocates seek here. PG&E opposes that petition, which is meritless, on both procedural and substantive grounds, and will file a response in opposition in that proceeding.

3/ D.19-11-016.

procure an additional 11,500 MW of incremental non-emitting generation resources between 2023 and 2026.[4/] Although the Commission considered other allocation methods, the Commission also ultimately apportioned that procurement order on a load-share basis. In 2023, the Commission required LSEs, including ESPs, to procure an additional 4,000 MW by 2028, using the same basic allocation framework as in the previous orders.[5/] In 2025, the Commission announced it was considering another procurement order to maintain electric system reliability covering the period between 2028 and 2032.

In September 2025, the Administrative Law Judge issued a ruling seeking comments on the need for additional procurement between 2029 and 2032 ("ALJ ruling") to support system reliability.[6/] The ALJ ruling included a thorough analysis of reliability needs between 2028 and 2032. The analysis was based on a set of updated assumptions about supply and demand in these years, including: the load forecast adopted by the California Energy Commission in 2024 (i.e., the 2024 Integrated Energy Policy Report), which included load growth attributable to data center demand, continuing vehicle and building electrification, and lower adoption of behind-the-meter solar and storage; updated generation resource assumptions regarding the delayed online dates of long-lead time resources, and updated assumptions about behind-the-meter photovoltaic deployment and capacity factors. In addition, staff also analyzed weather and load volatility, hydrological conditions, and solar and wind generation output.[7/] Using these assumptions and information about LSEs' existing portfolios, Commission staff modeled several different scenarios (including a reduced data center load scenario). In each scenario, there was a clear additional procurement need compared to the base case portfolio, ranging from 1,645 MW

4/ D.21-06-035.

5/ D.23-02-040.

6/ R.25-06-019, Administrative Law Judge's Ruling Seeking Comments on Electricity Portfolios for 2026-2027 Transmission Planning Process and Need for Additional Reliability Procurement, issued September 30, 2025.

7/ See Mid-Term Need Determination Analysis, slide 21, Sept. 30, 2025, available at PowerPoint Presentation.

(in the reduced load scenario) to 6,662 MW (in the increased data center load plus long-lead time delay scenario). Based on this staff analysis, the ALJ ruling proposed LSEs would be required to undertake 6,000 MW of additional procurement between 2029 and 2032.[8/] The ALJ ruling also proposed that the 6,000 MW would be allocated to specific LSEs based on each LSE's share of the managed peak load of the electric system as of the 2026 resource adequacy program year, consistent with the procurement requirements for the 2019, 2021, and 2023 procurement orders.[9/] The ALJ ruling specifically solicited comments on alternative approaches to need allocation.[10/]

The Commission released a proposed decision reflecting additional procurement needs on January 14, 2026. Multiple parties commented on the proposed decision. As to the allocation specifically, Shell opposed allocation to ESPs until the direct access cap is lifted, while the Alliance for Retail Energy Markets argued that allocation should be determined through a workshop followed by public comments.[11/]

The Commission issued a final decision on February 26, 2026. The Decision retained the need allocation methodology proposed in the ALJ ruling and the proposed decision.[12/] In rejecting Shell's and the Alliance for Retail Energy Markets' alternatives, the Commission acknowledged "the point made by Shell and others that the direct access load is capped."[13/] Nonetheless, the Commission "decline[d] to exempt ESPs from the need to procure their proportional share of the additional capacity found to be needed in this order" because ESP customers "contribute to the overall need to add resources to meet reliability standards" and

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8/ See ALJ Ruling, pp. 34-37.

9/ Id., p. 37.

10/ Ibid.

11/ Proposed Decision, p. 35.

12/ D.26-02-057, p. 40.

13/ D.26-02-057, p. 43.

because "all customers and providers benefit from a reliable electric system. Therefore, all LSEs should be required to procure for the reliability needs."[14]

III. ARGUMENT

DA Advocates claim that the Commission's procurement order unlawfully fails to consider fairness, equity, and cost-causation principles, as required by various provisions of the Public Utilities Code. DA Advocates misread the relevant statutory mandates and misunderstand how those mandates apply in this context. Contrary to their representations, the Decision appropriately allocates procurement responsibility based on forecasted managed peak load principles.

But even if it were true that the Decision does not appropriately allocate procurement need, DA Advocates' proposed remedies—removing the direct access cap altogether, modifying a decision in another proceeding, or else exempting ESPs from any allocation at all—do not follow. The former remedies are not available in this proceeding, and the latter remedy itself would create a new illegality, as it would inappropriately disregard ESPs' roles in cost causation and unfairly and unlawfully shift their obligations to other LSEs.

A. D.26-02-057 is a system reliability order, not an order to serve energy load growth, and accordingly, DA Advocates' legal claims fail.

DA Advocates' application for rehearing rests on the assumption, repeated throughout their filing, that the procurement order exists solely to serve increased load primarily attributable to data center demand. DA Advocates complain that, because ESPs cannot serve that increased load, it is unfair to them and their customers to be required to procure for load that they cannot serve. In their view, the Decision violates cost-causation principles and inappropriately socializes the cost of serving new data center load across all LSEs, allegedly in violation of Public Utilities Code Sections 397(a)(1), 454.52(c), 366.2(d)(1), 365.2, and 366.3.

DA Advocates are mistaken on multiple fronts. First, as the Decision makes clear, the need analysis does not rely exclusively (or even predominantly) on data center demand. To the

14/ D.26-02-057, p. 43.

contrary, multiple factors informed the procurement need that are not tied to "load [that] ESPs cannot service."[15/] These include: revised assumptions for behind-the-meter solar adoption and capacity factors, updated assumptions about supply (including updated understanding of online dates for long-lead time resources), and changed demand forecasts attributable to demand growth from sources *other than* data centers. Although the Commission considered sensitivity scenarios related to the load forecast, it did not independently consider each factor's contribution to the procurement need. Such an analysis would be infeasible, as it is not possible to isolate each factor's contribution to the procurement need, as some factors are interdependent. In short, the notion that the reliability procurement need identified by the Commission is attributable entirely to load growth that ESPs "cannot serve" is belied by the record.[16/]

Second, DA Advocates appear to conflate *energy* load growth with *peak* load growth. It is the latter that is relevant for assessing system reliability needs. While energy needs are related to capacity needs (i.e., peak load), the relationship is not a simple one-to-one. As explained above, peak load conditions are determined not only by overall load growth, but also by system-level conditions (e.g., resource availability) and LSE-specific conditions (e.g., load profiles). Some incremental load (e.g., electric vehicle charging load) is flexible, meaning it may not necessarily contribute to peak need (or may contribute incrementally less than its energy-share of load). By contrast, ESP load may be inflexible, and may contribute *more* than its energy-share of load). In other words, a cap on energy load growth does not necessarily equate to a cap on peak load growth. DA Advocates have failed to establish that their peak load is capped and will remain flat through 2032, or that their peak load is not contributing to the Commission's need determination. DA Advocates' assumption that *energy* and *peak* needs are coextensive, and that ESPs are not contributing to peak load needs, is not necessarily correct.

15/ AFR, p. 2.

16/ In fact, the Alliance for Retail Energy Markets has conceded as much, noting in its comments that 3 GW of the new data center load (half of the total) is attributable to data center demand. See Opening Comments of AREM on the PD, p. 3. Further, their comments also admit that their load *does* grow to 2032 by approximately 5 percent. Id., p. 2.

Third, the DA Advocates are similarly mistaken that ESP customers "cannot use" the power from any procurement by an ESP as a result of the Decision.[17/] As the Commission has previously acknowledged, existing customers might expand their load, even if doing so would exceed the direct access cap.[18/] Thus, it is quite possible that existing ESP customers could contribute to the overall load growth in the 2029-2032 timeframe, including the growth in data center demand, if those existing ESP customers were to expand their existing service or upgrade their existing facility. DA Advocates fail to acknowledge this possibility.

Finally, contrary to the logic of DA Advocates' argument, system reliability does not turn on when a given load enters the system. Or, stated differently, reliability needs are driven by projected system conditions, not by whether a particular user's load pre-dated others' loads. DA Advocates appear to believe that, because their load pre-dates new load from data centers, they should not be responsible for procuring to ensure reliability for that new load. Their position implies a power (or right) of incumbency that does not exist. During conditions of grid stress, there is no distinction between incumbent and newer load; all load may contribute to system stress, whether load has existed for forty years or is a new system entrant. ESPs account for approximately 10.6 percent of the managed peak load, and accordingly they were allocated 10.6 percent of the new procurement need. Because all load on the system contributes to system stress, so, too, does all load contribute to the reliability needs identified by the Commission. As the Commission explained, "all customers contribute to the overall need to add resources to meet reliability standards and…all customers and providers benefit from a reliable electric system."[19/] Given their contributions to the conditions that created the procurement need (e.g., their share of the new managed peak load analysis), their allocation is based on their contribution to those system conditions. Thus, it is appropriate to allocate need to ESPs, proportionate to the contributions to the peak load need.

17/ AFR, p. 14.

18/ D.10-03-022, Appendix 2, p. 7.

19/ D.26-02-057, p. 43.

1. DA Advocates have not established that the Decision violates Section 397(a)(1).

As an initial matter, DA Advocates criticize the Decision for "omit[ing] any discussion of Section 397."[20/] The application insinuates that the Commission recklessly overlooked Section 397(a)(1). In fact, no party invoked Section 397 in comments, or otherwise alerted the Commission to a failure to comply with Section 397—notwithstanding party obligations to raise legal errors in their comments on the proposed decision.[21/] Thus, the Commission's failure to discuss Section 397 is unremarkable, and does not itself constitute error.

Regardless, Section 397(a)(1) directs the Commission to develop methodologies to allocate procurement need based on the contribution of each LSE's load and resource portfolio to the "conditions that created the need for the procurement."[22/] The procurement order challenged by DA Advocates—like each of the procurement orders before it—is allocated to all LSEs on a load share basis because the Commission has not "made any findings that any LSE has created any differential need for system integration resources."[23/] DA Advocates have not demonstrated any error in this regard.[24/]

DA Advocates instead base their argument on their own novel interpretation of Section 397(a)(1). They apparently believe Section 397(a)(1) requires allocation of procurement need based on the incremental energy load. That interpretation is incorrect for multiple reasons. First, the statute does not require that a procurement need be allocated based on incremental energy load; it instead refers broadly to the "contribution" of the LSE to "system conditions that created

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20/ AFR, p. 8.

21/ Rule 14.3(c).

22/ The AFR also complains about the failure of the Commission to finalize a generalized "methodology" for allocating need in IRP proceedings. See AFR p. 6, id. p. 9. That grievance is not cognizable in this proceeding. To the extent the DA Advocates believe the Commission has failed to perform a nondiscretionary duty imposed by Section 397(a), it should file a petition for a writ of mandate under Code of Civ. Proc. § 1085.

23/ D.21-06-035, p. 52.

24/ To the extent the DA Advocates assert that this methodology has *always* been unlawful, it represents an impermissible collateral attack on D.21-06-035 and D.23-02-040.

the need for the procurement." Section 397(a)(1) speaks about the "contribution" of each LSE's "load" and "resource portfolio" to the "need for the procurement." "Load" is not further defined, but it does not need to be understood exclusively as the incremental energy load—indeed, the better interpretation is that "load" refer to the load that contributes to the *reliability* need, that is, managed peak load. Allocation based on incremental energy load would make little sense, for the reasons explained above: an LSE's overall energy profile could be flat (i.e., make no contribution to incremental demand growth) but, through its resource portfolio, contribute to a system reliability need. For instance, an LSE that procured an abundance of solar plus energy storage resources may contribute to a system need regardless of their flat demand profile. The inverse is also true; an LSE may grow peak demand while its overall energy profile remains flat.

Second, DA Advocates' interpretation reads the words "resource portfolio" out of the statute entirely. An LSE's "contribution" to the procurement need is composed of *both* the load *and* the resource portfolio. An LSE may not experience load growth but could still contribute to a system reliability need by, for example, procuring intermittent or energy-limited resources. DA Advocates' interpretation has no accommodation for this, violating fundamental tenets of statutory interpretation by rendering the statutory reference to "resource portfolio" superfluous.[25/]

In short, DA Advocates' brittle interpretation of the statute is incorrect. The Commission's Decision does not violate Section 397(a)(1) merely because it allocates procurement need based on managed peak load share rather than on incremental energy load.

25/ PG&E supports the Decision's procurement need allocation methodology in light of the urgency of bringing new resources online in a timely manner. PG&E nonetheless underscores the importance of the statutory mandate to adopt an allocation methodology in this or another proceeding that accounts for each LSE's individual resource portfolio. See, e.g., R.20-05-004, Opening Comments of PG&E on proposed decision of Administrative Law Judge Fitch requiring procurement to address mid-term reliability and the alternate proposed decision of Commission Rechtschaffen (filed June 10, 2021).

2. The Decision does not violate any other provision of the Public Utilities Code.

DA Advocates' arguments that the Decision violates other provisions of the Public Utilities Code—the statutory indifference mandate and other provisions barring cost-shifting—are equally unavailing.

DA Advocates (twice) maintain that the Decision violates § 454.52(c).[26/] That subdivision applies to "additional procurement" that occurs "in the integrated resource *plan* or the procurement process authorized pursuant to Section 454.5."[27/] It does not apply here, where the additional procurement is ordered *outside* of the integrated resource plan and outside of any procurement process authorized by 454.5.

But even assuming Section 454.52(c) were relevant here, the requirement that "the costs [of any procurement order] are allocated in a fair and equitable manner to all customers" and "there is no cost shifting among customers of load-serving entities" are met, for the reasons explained *supra* in Section A.1. The DA Advocates' belief that ESP customers are being assigned costs that are inequitable, represent a cost-shift, or violate cost-causation principles is based on their mistaken notion that allocation is being assigned solely based on load growth the ESPs cannot serve (which is doubly wrong—it is not based solely on load growth, and ESPs are not entirely barred from serving load growth), and their additional belief, also wrong, that system need must be allocated based on incremental energy load, not based on managed peak load. They are incorrect. It is equitable to allocate reliability procurement to ESPs. Their contention otherwise is based on layer upon layer of flawed assumptions: that the procurement need is driven solely by load growth (it is not), that ESPs cannot serve any load growth (they can serve at least some load growth), and that the relevant metric is incremental energy load, not managed peak load (again, incorrect, because reliability need is driven by managed peak load, not incremental energy load). As the allocation is not inequitable, the Decision does not violate

26/ Sections B and F of the AFR appear to be identical. PG&E assumes that the repetition is an error.

27/ Pub. Util. Code § 454.52(c) (emphasis added).

Sections 366.2(d)(1), 365.2, or 366.3, all of which contain similar prohibitions on cost-shifting. No statute requires the approach DA Advocates would prefer.

3. The Decision's need allocation was supported by the record.

DA Advocates also attack the Decision on the grounds that it is not sufficiently supported by the record. Their contention boils down to their view that the Decision's procurement allocation discussion was "quite sparse."[28/] In their view, the Decision's "brief discussion does not rise to the level of the findings necessary to impose tens of millions of dollars of procurement costs on ESPs."[29/] DA Advocates conflate brevity with substance; a terse decision may still be supported by the facts. And it was here. First, DA Advocates ignore the Commission's historic practice of allocating procurement need based on managed peak load share, and its prior explanation, in D.21-06-035, for its adoption of this method. Continuation of existing practice need not again be justified—at least in a context where no party actually proposed an alternative, lawful allocation methodology. Second, the DA Advocates overlook the Commission's actual rationale for allocation based on managed peak load share: that they also contribute to the overall need to add resources (which is not, after all, based solely on incremental energy load growth).[30/] The fact that ESPs account for more than 10 percent of the managed peak load is clear from the record. Third, DA Advocates ignore that individual ESP energy and peak load forecasts are confidential, and the Commission cannot elaborate in significant detail on these items in its Decision.

The remainder of DA Advocates' complaints on this score are reiterations of their legal arguments, which are addressed above.

28/ AFR, p. 17.

29/ Id.

30/ D.26-02-057, p. 43.

B. Even assuming the Decision is flawed, DA Advocates cannot obtain the relief they seek.

Even if DA Advocates were correct that the Decision's need allocation methodology raises legal concerns, their requested remedies—lifting the direct access cap, reconsidering D.21-06-033, or else exempting ESPs from the procurement order's allocation altogether—do not follow from that alleged error and are neither authorized nor equitable.

1. The primary relief requested is unavailable in this application for rehearing.

Even if the DA Advocates have identified any cognizable error, the Commission should deny their request to lift the direct access cap or to "reconsider D.21-06-033" on rehearing in R.25-06-019.[31/]

As an initial matter, the Commission may not unilaterally "act to remove the cap on [Direct Access]."[32/] Indeed, Shell, one of the challengers here (although not an appropriate party applicant, see *supra* footnote 1), itself recognized that "raising the Direct Access cap would likely require legislative intervention, pursuant to Public Utilities Code section 365.1."[33/] To the extent DA Advocates suggest that the Commission may unilaterally remove the statutory cap, they are mistaken.

But assuming that the Commission had the unilateral authority to remove the direct access cap, that remedy is not available in this proceeding. An application for rehearing requests changes to the *challenged* decision—that is, the order or decision issued. This is evident from both common sense and the plain text of Rule 16.1 itself, which refers to "*the* order or decision" challenged, and requires the applicant to identify errors in "*the* order or decision."[34/] An application for rehearing, in other words, is limited to challenging a specific order or decision, and requesting rehearing *of that order or decision*. It is not a vehicle to challenge *other*

31/ AFR, p. 4, see also AFR p. 19.

32/ AFR, p. 19.

33/ Shell, Opening Comments on ALJ ruling, p. 10.

34/ Rule 16.1(a) (emphasis added); Rule 16.1(c) (emphasis added).

decisions, including decisions issued in different proceedings, or to request generalized relief such as a new rulemaking.

Here, the Challengers do not principally ask for any changes to the decision on which they seek rehearing, instead, they request either lifting of the cap (which must be accomplished by statute or, at a minimum, in a separate rulemaking) or reconsideration of a completely separate decision, D.21-06-033, issued in a separate proceeding, R.19-03-009. The appropriate vehicle to request lifting the cap is in a petition for rulemaking or, and the appropriate place to request a modification to D.21-06-033 is in R.19-03-009, *not* in this application for rehearing. The fact that DA Advocates have simultaneously filed a petition for modification in the relevant proceeding only underscores that they are aware that such relief is inappropriate here. Indeed, the issues DA Advocates inject into this proceeding via their request for relief have not been scoped in this proceeding, the parties in this proceeding have had no opportunity to comment or develop the record on this issue, other interested parties may or may not be monitoring the docket of this proceeding. To entertain DA Advocates request to lift the direct access cap or modify a decision in a separate proceeding would make a hash of the Commission's Rules of Practice and Procedure and could open the floodgates to parties raising issues and concerns that are not directly pertinent to the proceeding at hand, simply because it is an open forum. In short, the DA Advocates' preferred relief is unfair and unauthorized by the Rules or any other law or process. Were the Commission to indulge DA Advocates, the Commission would fail to proceed in a manner authorized by law.

2. Exempting ESPs from the procurement order would itself be unlawful.

DA Advocates are likewise incorrect to the extent they argue that the Commission may grant rehearing and exempt them from procuring in response to the need analysis. Although DA Advocates assert the Commission's allocation has not accounted for cost-causation principles, they are incorrect that application of those principles would exempt them from any allocation. As noted above, new data center demand does not account for the full assessed procurement need; there are significant other factors driving procurement need, including LSE resource portfolios. Further, ESP customers represent at least five percent of projected load growth over the need period.[35] Thus, even on this record, it would be unlawful to exempt ESPs entirely from need allocation. Further, PG&E notes that reallocating need currently assigned to ESPs to other LSEs would itself represent a shift that would disproportionately (and unlawfully) fall to the remaining LSEs, and could itself violate Section 397(a)(1).

To the extent the Commission agrees with DA Advocates that the Commission's existing need allocation methodology (i.e., allocating on the basis of each LSE's share of the managed peak load as of the 2026 resource adequacy program year) is unlawful, the Commission should grant rehearing for the limited purpose of devising an alternative allocation methodology that may be applied to all LSEs subject to the Commission's jurisdiction. If the Commission were to pursue this path (and it should not), PG&E stresses that the Commission must do so on an expedited basis. LSEs have already taken steps to comply with the Decision, and any Commission action that could threaten to upend those actions, or impose new compliance obligations, requires sufficient lead time and may impose additional costs on customers. PG&E also underscores that any reallocation must be based a reasonable interpretation of Section 397(a)(1)—and DA Advocates has not offered a reasonable interpretation, for the reasons explained above.

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35/ See Opening Comments of AReM on Proposed Decision requiring 2029-2032 electric resource procurement and transmitting portfolios for 2026-2027 transmission planning process, p. 2.

IV. CONCLUSION

For the foregoing reasons, PG&E requests the Commission deny the DA Advocates' Application for Rehearing.

Respectfully Submitted,

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Dated: April 21, 2026