STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

FILED

09/04/26

11:12 AM

R1903009

September 4, 2026

Agenda ID #24508
Quasi-Legislative

TO PARTIES OF RECORD IN RULEMAKING 19-03-009:

This is the proposed decision of Commissioner John Reynolds. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's **October 8, 2026** Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ MICHELLE COOKE

Michelle Cooke
Chief Administrative Law Judge

MLC: smt

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER JOHN REYNOLDS**
(Mailed 9/4/2026)

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

DECISION DENYING PETITION FOR MODIFICATION OF DECISION 21-06-033

Summary

This decision denies 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's petition for modification of Decision 21-06-033. The petition fails to satisfy the requirements of Rule 16.4(b) and 16.4(d) of the Commission's Rules of Practice and Procedure.

This proceeding is closed.

1. Background

The California Public Utilities Commission (Commission) issued Decision (D.) 21-06-033 on June 29, 2021. In D.21-06-033, the Commission considered the factors under Public Utilities (Pub. Util.) Code Section 365.1 and ultimately recommended to the Legislature against further expansion of the Direct Access (DA) program.

On April 6, 2026, a joint petition for modification of D.21-06-033 (petition) was filed by 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 (collectively, Joint Parties). The petition seeks to modify D.21-06-033 to remove the cap on DA and for the Commission to send a positive recommendation to the Legislature to eliminate the DA cap.

Responses to the petition were filed on May 6, 2026 by: 3 Phases Renewables Inc. (3PR), California Community Choice Association (CalCCA), California Large Energy Consumers Association (CLECA), Commercial Energy of California (Commercial Energy), the Public Advocates Office at the Commission (Cal Advocates), Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), and Southern California Edison (SCE). The Administrative Law Judge (ALJ) granted Joint Parties leave to file a reply to responses, and on May 18, 2026, Joint Parties filed a reply to responses.

2. Summary of Petition

Joint Parties request that the Commission modify D.21-06-033 to lift the cap on DA and to send the Legislature a recommendation that the cap on DA be lifted.[1] Joint Parties argue that in September 2020, Energy Division issued a Staff Report, which recommended that the Commission set an initial reopening schedule for DA in increments equal to 10% of eligible non-residential load per year. Joint Parties assert that Staff's Report indicated that DA could be reopened subject to electric service providers' (ESP) demonstrating compliance with several obligations: (1) ESPs submit robust Integrated Resource Planning (IRP)

[1] Joint Parties Petition for Modification of D.21-06-033 (Petition) at 7.

filings and meet all procurement requirements; (2) ESPs meet Renewables Portfolio Standard (RPS) obligations for the 2021-2024 period; and (3) ESPs comply with all Resource Adequacy (RA) requirements. Joint Parties state that the Commission, however, ignored these recommendations and based on "what the [Joint] Parties understood to be pressure from now former Commissioners, the Staff Report was subsequently revised significantly to recommend against reopening DA."[2]

Joint Parties state that D.21-06-033 recommended to the Legislature that DA should not be reopened for two reasons. First, it cited ESPs' lack of a track record in building new generation resources by stating that "system reliability would be at increased risk if ESPs were to serve a significant portion of the states' load."[3] The decision stated that most of ESPs' procurement relies on California Independent System Operator (CAISO) system power beyond RPS requirements and the greenhouse gas (GHG) emissions factor for CAISO system power is slightly higher than gas generation. Second, the decision stated that "[i]f past procurement indicates future outcomes, then load migration from [investor-owned utilities (IOU)] or [community choice aggregators (CCA)] to ESPs may lead to a net decline in RPS procurement, relative to maintaining the current cap on Direct Access, which may increase GHG emissions and increase criteria air pollutants and toxic air contaminants."[4]

Joint Parties assert that these concerns have since been addressed by the Commission and by ESPs. Joint Parties contend that ESPs cannot just rely on CAISO system power to meet RA needs, as they must hold RA contracts like all

---

[2] *Id*. at 7.

[3] *Id*. at 8.

[4] *Id*. at 9 (citing D.21-06-033 at 11).

load-serving entities (LSE). RPS requirements have increased significantly each year and thus the proportion of total procurement by long-term RPS contracts is significant. Joint Parties state that ESPs are subject to the same requirements for RPS and criteria air pollutants as other LSEs, and ESPs successfully meet RPS requirements. Joint Parties state that D.21-06-033 cited concerns that ESPs procured lower amounts of RPS-qualified energy than other LSEs, but the parties argue that ESPs must procure adequate amounts of RPS-eligible energy. Joint Parties argue that the reliability of CAISO's grid has changed significantly since 2020 and with the addition of storage, the RA market has shifted from scarcity in 2020 to a current surplus. Joint Parties note that the number of RA violations by ESPs dropped to zero in 2025.

Joint Parties further state that the cause of the DA suspension was rooted in the 2000-2001 energy crisis, and that those events have been addressed by the Legislature and the Commission through the RA, RPS, and IRP statutes. Joint Parties state that since D.21-06-033, California's load growth outlook has changed from one of incremental to rapid growth based on the California Energy Commission's California Energy Demand Integrated Energy Policy Report. Joint Parties argue that the DA program is well-suited to meet the needs of large commercial loads, such as data centers, as service could be negotiated under a contract between a customer and ESP. However, the DA cap prevents ESPs from serving new large load customers.

Lastly, Joint Parties assert that while signing up for DA service is a protracted and involved process, customers are eager to sign up. Joint Parties argue that retail competition in electric markets is beneficial in lowering costs, driving innovation, and improving customer service by encouraging providers to compete for market share.

2.1. Timing of Petition

Joint Parties contend that the petition could not have been presented within one year of D.21-06-033 because "the total impact of the decision was not clear until recently."[5] Joint Parties state that modification is now warranted due to the issuance of D.26-02-057 on March 5, 2026. Under D.26-02-057, ESPs are allocated a proportional share of 6 gigawatts (GW) of significant new renewable procurement to address anticipated load growth. Yet ESPs are not permitted to serve that load because of the statutory cap on DA participation. Joint Parties state that D.26-02-057 will significantly and negatively impact DA customers by imposing procurement obligations on ESPs that exceed the load ESPs are legally permitted to serve under the DA cap.

Joint Parties note that they filed an application for rehearing (AFR) of D.26-02-057 alleging, among other things, that D.26-02-057 will cause inappropriate cost shifting to DA customers because the decision orders procurement of new resources to meet reliability needs and allocates procurement responsibility to all LSEs, including ESPs.

3. Summary of Party Responses

3PR, CLECA, and Commercial Energy support the petition.[6] These parties agree with the petition that D.21-06-033 and the DA cap are based on outdated concerns about reliability, procurement practices, and emissions that are no longer applicable.

---

[5] *Id*. at 4.

[6] 3PR Response to Petition at 1, CLECA Response to Petition at 2, Commercial Energy Response to Petition at 1.

Cal Advocates, CalCCA, PG&E, SCE, and SDG&E oppose the petition for multiple reasons.[7] PG&E, SCE, and SDG&E argue that the petition is not timely under Rule 16.4(d) of the Commission's Rules of Practice and Procedure (Rules), because the issues raised in the petition could have been presented within one year of D.21-06-033 and ESPs' ability to serve future new load is not an unexpected change in facts/circumstances. SCE states that the DA cap from D.21-06-033 precludes customers from switching to DA service once the DA cap in an IOU's service area is reached; therefore, petitioners would have known in 2021, or should have anticipated, that sources of new load would be precluded from taking DA service if the cap was reached. SDG&E similarly states that the use of a load-based allocation methodology to assign procurement responsibility to ESPs is not a new or changed fact, and that D.26-02-057 stated that load-based allocation was previously used in D.21-06-035, the IRP proceeding's mid-term reliability (MTR) decision. Thus, the Joint Parties could have sought to modify D.21-06-033 within one year, after the issuance of D.21-06-035.

PG&E states that the petition's justification that the Commission's policy has evolved over time, such as with the recent IRP decision, is not an adequate justification for failing to file the petition within one year. PG&E notes that a subset of the Joint Parties filed an AFR of D.21-06-033 and identified several of the same issues in their application as now stated in the petition, including that the decision disregarded that all LSEs are subject to the same RA, RPS, IRP, and GHG requirements and concerns about the Commission putting long-term procurement obligations on ESPs. The AFR was denied by the Commission in

[7] Cal Advocates Response to Petition at 1, CalCCA Response to Petition at 3, PG&E Response to Petition at 2, SCE Response to Petition at 2, SDG&E Response to Petition at 2.

D.22-12-058, finding that the evidentiary record correctly addressed each of the factors required by Pub. Util. Code Section 365.1(f)(2).

Cal Advocates, PG&E, SCE, and SDG&E argue that the petition alleges material factual information but does not provide an affidavit or declaration to support those allegations, as required by Rule 16.4(b). The parties generally state that the declaration attached to the petition addresses only limited statements but does not address all factual allegations that Joint Parties need to justify their modification, including that ESPs are better suited at preventing cost shifting to meet the needs of new large customers and that allowing ESPs to serve new customers will add contractual certainty, enhance system reliability, and insulate residential/small customers from rate increases that could occur. These parties state that there is otherwise no record support for these assertions.

Cal Advocates, PG&E, and SCE argue that the petition is not the appropriate vehicle to evaluate the proposed changes. Cal Advocates states that the petition presents complex issues and unverified claims that require a thorough examination, which is not afforded by a response to a petition. Cal Advocates notes that D.21-06-033 was based on a robust evidentiary record that included Energy Division's report, a workshop, and party comments. Cal Advocates points out that the petition proposes deleting all existing Findings of Fact and Conclusions of Law from D.21-06-033, and adding Findings of Fact and Conclusions of Law that reach the opposite conclusion determined in D.21-06-033. For example, the petition proposes adding a finding that "[a]llowing ESPs to serve new customers adds contractual certainty, enhance[s] system reliability and insulate[s] residential and small customers from the rate increases that occur should the new load be served exclusively by other LSEs."

Cal Advocates states that this proposed modification is based on speculative claims and alleged facts that are reasonably subject to dispute.

Cal Advocates and PG&E point out that D.21-06-033 did not reach a conclusion on two of the four issues from Section 365.1(f), stating that "[b]ecause the Commission has already determined that it cannot recommend expansion of Direct Access, it is not necessary for this decision to make a specific finding regarding cost-shift in an expanded Direct Access."[8] However, the petition seeks a Conclusion of Law that removal of the DA cap will not cause undue cost-shifting to bundled customers or direct customers. Cal Advocates argues that the 2020 Staff Report identified potential cost shifts not addressed by the Power Charge Indifference Adjustment that could result from DA expansion. These parties state that a petition should not be used to make factual/legal conclusions that were expressly left undecided in D.21-06-033 or in the underlying rulemaking. SCE likewise states that if the Commission considers the issues in the petition, it should be done in a rulemaking to allow for due process and a robust administrative record.

PG&E and CalCCA point out that Pub. Util. Code Section 365.1(f), the statutory basis for D.21-06-033's findings and recommendations to the Legislature, has since been removed from the Public Utilities Code and is no longer operative. Section 365.1(f) required the Commission to provide recommendations and findings to the Legislature regarding potential DA reopening by June 1, 2020. These parties state there is no further obligation to make recommendations to the Legislature. PG&E notes that the legislative

[8] Cal Advocates Response to Petition at 5 (citing D.21-06-033 at 22), PG&E Response to Petition at 10.

history of Section 365.1(f) confirms that the deletion was intended to remove a completed statutory obligation.

CalCCA states that the factors that drove the Commission's recommendation against DA expansion have not materially changed. CalCCA states that, for example, the Commission's 2026 RPS Report and the most recent LSE IRP plans show ESPs continue to lag behind on new resource development. CalCCA also states that the petition fails to substantiate how ESPs are better suited at meeting the needs of new large customers, as compared to CCAs and IOUs. Cal Advocates states that while the petition does not provide estimates of the load volume DA parties are expected to serve following removal of the DA cap, it is reasonable to assume that load departure for DA service could be significant. Cal Advocates states that unpredictable load departure creates challenges for long-term planning and contracting.

SCE questions the veracity of the petition's unsupported facts, including that while the petition states that ESPs met RA requirements in 2025, it shows ESPs failed to meet RA requirements from 2017-2024. SCE notes that ESPs' meaningful contributions to reliability were compelled through recent new legislation and that ESPs' track record is relatively short. SCE states that the petition fails to address the fragmentation of the procurement landscape in California that was a concern in D.21-06-033, which is that as more load is divided among more LSEs, it is less certain that the large facilities will be procured for reliability.

In reply to responses, Joint Parties reiterate that ESPs have a strong track record in supporting the state's reliability goals.[9] Joint Parties respond that the

[9] Joint Parties Reply to Responses at 3.

2022 IRP filing was outdated and filed before the expanded MTR requirements in D.23-02-040. Joint Parties assert that load migration on its own does not create reliability risk and regulatory frameworks exist to address any concerns, such as the Planning Reserve Margin. Joint Parties recommend the DA cap be expanded in multiple phases to address concerns about load migration risk.

Joint Parties respond that removal of the DA cap will not result in shifting procurement costs onto bundled customers, and that while this concern was raised as a possibility during the rulemaking, there was no finding on this by the Commission or Energy Division. Joint Parties also state that the use of DA to serve new load growth should only impact the contracting parties, and other customers should not incur rate increases.

Joint Parties argue that the petition complies with the requirements of Rule 16.4(b). The parties also state that the petition complies with Rule 16.4(d) because petitioners could not have anticipated the impact of the DA cap on the ESPs' ability to serve new load within one year of the decision. Joint Parties reiterate that the underlying conditions that supported the original decision have materially changed in ways that could not have been predicted or foreseen within one year of the decision. Joint Parties acknowledge that Section 365.1(f) was removed from the Public Utilities Code; however, the parties state that the Commission is entitled to submit recommendations to the Legislature at any time and on any topic.

4. Standard of Review

Under Pub. Util. Code Section 1708, the Commission has broad discretion to "rescind, alter, or amend any order or decision made by it."[10] Commission

[10] Section 1708 states the Commission "may at any time … rescind, alter, or amend any order or decision made by it."

decisions interpreting Section 1708 have consistently held that modifying an existing decision is, however, an extraordinary remedy that must be carefully applied to keep with the principles of res judicata since "Section 1708 represents a departure from the standard that settled expectations should be allowed to stand undisturbed."[11] A petition for modification is not a substitute for legal issues that may be raised in an application for rehearing.[12]

As provided in Rule 16.4(b), "[a]ny factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit."[13] Under Rule 16.4(d), a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. "If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition."[14]

5. Discussion

5.1. Petition Fails to Meet the Rule 16.4(b) Requirements

We consider whether the petition meets the requirements of Rule 16.4(b). As referenced above, Rule 16.4(b) requires that any factual allegations must be

[11] 1980 Cal. PUC LEXIS 785, 24; *see also* 2015 Cal. PUC LEXIS 278, 7.

[12] *See* 2011 Cal. PUC LEXIS 483, 4; Rule 16.4(a) of the Commission's Rules of Practice and Procedure (Rules); *N. Cal. Ass'n to Pres. Bodega Head & Harbor, Inc. v. CPUC*, 61 Cal. 2d 126, 135 (1964).

[13] Rule 16.4(b).

[14] Rule 16.4(d).

supported with specific citations to the record in the proceeding or to matters that may be officially noticed, and any allegations of new or changed facts must be supported by an appropriate declaration or affidavit. While the petition attaches the Declaration of Daniel W. Douglass (declaration), the declaration only supports the petition's justification for why the petition was not filed within one year of D.21-06-033. The declaration expressly provides: "[p]er the facts cited above, I declare that this Petition could not have been filed within one year of the issuance of the Decision."[15]

Therefore, no declaration or affidavit supports various other allegations of new or changed facts presented in the petition, such as:

- "Given that RPS requirements have increased significantly year-over-year, the proportion of total procurement represented by long-term RPS contracts is significant."[16]
- …"[a]llowing 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."[17]
- "…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."[18]
- "These contracts will provide certainty to the ESPs, who can then properly finance deals to serve this load without

[15] Petition, Declaration of Daniel W. Douglass, at Paragraph 8.

[16] Petition at 8.

[17] *Id*. at 16.

[18] *Id*.

> risk to other customers and with no additional effort required from the Commission."[19]

In addition, the factual allegations in the petition are not supported by specific citations to the record in the proceeding or to matters that may be officially noticed, as required by Rule 16.4(b). As such, the Commission finds that the petition fails to satisfy the threshold requirements of Rule 16.4(b).

Moreover, the Commission agrees with opponents of the petition that a petition for modification is not the appropriate venue to consider the issues raised by Joint Parties. Not only does the petition raise complicated issues that are not supported or verified by any record, the petition also proposes modifying D.21-06-033 to eliminate all Findings of Fact and Conclusions of Law, and reach determinations that directly contradict the Commission's rationale in D.21-06-033. Notably, the Commission expressly did not reach a determination on two factors from Section 365.1(f) in D.21-06-033, once it determined that it could not make other required findings from Section 365.1(f). The Commission agrees that it would be inappropriate to now make determinations on those undecided issues through a petition for modification, as Joint Parties request, without the development of a robust record and party participation.

5.2. Petition Fails to Meet Rule 16.4(d) Requirements

While the petition fails to satisfy the Rule 16.4(b) requirements, we also consider whether the petition satisfies Rule 16.4(d) with respect to the timeliness of the petition. The petition was not filed within one year of D.21-06-033, which was issued on June 29, 2021. As such, we consider whether the Joint Parties have

---

[19] *Id.*

adequately justified why the issues in the petition could not have been presented within one year of the decision.

Joint Parties allege that they could not have presented the petition within one year of D.21-06-033 because "the total impact of the decision was not clear until recently."[20] The petition contends that under D.26-02-057, the recent IRP decision, "ESPs have been allocated a proportional share of 6 gigawatts (GW) of significant new 'perfect' renewable capacity (measured as NQC) procurement required to address anticipated load growth from data centers and electric vehicle charging."[21] The petition states that "[y]et ESPs are not permitted to serve that load because of the statutory cap on DA participation and this Commission's 2021 recommendation to the Legislature in the DA Decision."[22] Joint Parties state that D.26-02-057 will significantly and negatively impact DA customers by imposing on ESP suppliers procurement obligations that exceed the load ESPs are legally permitted to serve under the DA cap.

Opponents of the petition maintain that ESPs' ability to serve future new load was known, or reasonably should have been known, within one year of D.21-06-033 because the DA cap that resulted from D.21-06-033 would preclude customers from joining DA service once the DA limit was reached in an IOUs' service territory. SDG&E notes that the load-based allocation methodology used in D.26-02-057 to assign ESPs' procurement requirements was known in 2021 shortly after the issuance of D.21-06-033, as the allocation methodology was previously used in D.21-06-035 (the IRP proceeding's MTR decision). PG&E points out that in an AFR of D.21-06-033 filed by a subset of Joint Parties, which

[20] *Id*. at 5.

[21] *Id*.

[22] *Id*.

the Commission ultimately denied, the parties recognized that D.21-06-033 would impact the long-term procurement obligations placed on ESPs.

The Commission agrees that the issues raised in the petition with respect to limits on ESPs' ability to serve new future load, as well as the requirements and allocation methodology for the long-term procurement obligations, were known, or should have been known, within one year of D.21-06-033. Therefore, Joint Parties could have filed this petition within one year of D.21-06-033 and failed to do so. Rather, the petition was filed on April 6, 2026, nearly five years after the issuance of D.21-06-033. Accordingly, the petition fails to adequately justify its lack of timeliness, pursuant to Rule 16.4(d), and therefore the petition is denied.

5.3. Conclusion

For the reasons discussed, Joint Parties' petition for modification of D.21-06-033 fails to meet the threshold requirements of Rule 16.4(b) and 16.4(d). Accordingly, the petition is denied.

6. Comments on Proposed Decision

The proposed decision of Commissioner John Reynolds in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on __________, and reply comments were filed on _____________ by ________________.

7. Assignment of Proceeding

John Reynolds is the assigned Commissioner and Debbie Chiv is the assigned ALJ in this proceeding.

Findings of Fact

1. On June 29, 2021, the Commission issued Decision 21-06-033.

2. On April 6, 2026, Joint Parties filed a petition to modify D.21-06-033 to remove the DA cap and for the Commission to send a positive recommendation to the Legislature to eliminate the DA cap.

3. Rule 16.4(b) provides that any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Rule 16.4(b) also provides that allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

4. The petition for modification fails to include a declaration or affidavit to support the allegations of new or changed facts presented in the petition. The factual allegations in the petition are not supported by specific citations to the record in the proceeding or to matters that may be officially noticed.

5. Rule 16.4(d) requires that if more than one year has elapsed since the issuance of the decision proposed to be modified, the petition must explain why the petition could not have been presented within one year of the effective date of the decision.

6. The petition for modification fails to adequately justify why the petition could not have been presented within one year of the decision.

Conclusions of Law

1. It is reasonable to deny the petition for modification because it fails to include a declaration or affidavit to support the allegations of new or changed facts presented in the petition, and the factual allegations in the petition are not supported by specific citations to the record in the proceeding or to matters that may be officially noticed.

2. It is reasonable to deny the petition for modification because it fails to adequately justify why the petition could not have been presented within one year of the decision.

3. The petition should be denied for failing to meet the requirements of Rule 16.4(d) and 16.4(b).
4. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. 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's petition for modification of Decision 21-06-033 is denied.
2. Rulemaking 19-03-009 is closed.

This order is effective today.

Dated ___, 2026, at Sacramento, California.