

Decision 21-04-021

April 15, 2021

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding  
Microgrids Pursuant to Senate Bill 1339  
and Resiliency Strategies.

Rulemaking 19-09-009

**ORDER MODIFYING DECISION 21-01-018 AND DENYING  
REHEARING OF THE DECISION, AS MODIFIED**

**I. SUMMARY**

This decision addresses the application for rehearing of Decision (D.) 21-01-018 (or Decision) filed by the City of Long Beach, a municipal corporation, acting by and through its Board of Harbor Commissioners (Port).<sup>1</sup> In the Decision, we adopted microgrid rates, tariffs, and rules for the large investor-owned electrical corporations (i.e., Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E)) (collectively investor-owned utilities or IOUs) to facilitate the commercialization of microgrids pursuant to Senate Bill (SB) 1339 (Stern, Ch. 566, Stats. 2018). More specifically, and relevant to the Port’s rehearing application, the Decision took three actions: (1) ordered the IOUs to revise their electric tariff Rules 18 (PG&E and SCE) and Rule 19 (SDG&E) to allow microgrids owned by public agencies, or a third-party primarily serving a facility operated by a public agency, to serve critical facilities operated by municipal corporations on adjacent premises for emergency and/or critical operations during a grid outage; (2) directed use of the existing “critical facilities” list and processes adopted by D.19-05-042 or in subsequent decisions; and (3) concluded that

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<sup>1</sup> Unless otherwise noted, citations to Commission decisions are to the official pdf versions, which are available on the Commission’s website at: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

Public Utilities Code Section 218, commonly referred to as the “over-the-fence rule,” requires “any entity who wishes to sell energy to more than two contiguous parcels or across the street to become a regulated, electrical corporation as defined under Public Utilities Code Section 216.” (D.21-01-018 at pp. 28-29, 34-35, 107 (COL 11), 112 (OP 2).)

The Port timely filed an application for rehearing of the Decision. In its rehearing application, the Port alleges that the Decision was arbitrary and capricious and violated SB 1339, Public Utilities Code<sup>2</sup> Section 1705, and Section 1757(a)(4) because it did not address SCE’s Rule 18 Section E,<sup>3</sup> which generally prohibits the resale of electricity provided by SCE with limited exceptions. (App. Rhrng. at pp. 6-13.) The Port also argues that the Decision violated Sections 727 and 1757 and was arbitrary and capricious because it adopted the critical facilities list from D.19-05-042 and not the more recent D.20-05-021. (App. Rhrng. at pp. 14-16.) Lastly, the Port claims that Conclusion of Law 11 erroneously states that municipal corporations can become subject to Commission jurisdiction pursuant to Section 218. (App. Rhrng. at pp. 16-18.)

We have carefully considered the arguments raised in the application for rehearing and do not find grounds for granting rehearing. We modify D.21-01-018, as set forth below, to clarify the Commission’s obligations pursuant to Section 8371 and specify that there are limited exceptions to the over-the-fence rule. Rehearing of D.21-01-018, as modified, is denied.

## **II. BACKGROUND**

On September 12, 2019, the Commission initiated Rulemaking (R.) 19-09-009 to develop a framework for facilitating the commercialization of microgrids pursuant to SB 1339 and improving the resiliency of the electric system. On

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<sup>2</sup> Unless otherwise indicated, all subsequent section references are to the California Public Utilities Code.

<sup>3</sup> The Port correctly notes that PG&E Rule 18 and SDG&E Rule 19 are substantially similar to SCE Rule 18. The Port’s rehearing application refers only to SCE Rule 18 for convenience. (App. Rhrng. at p. 2, fn. 1.) For consistency with the Port’s rehearing application and simplicity, we generally also refer only to SCE Rule 18.

December 20, 2019, the Commission issued a scoping memo and ruling which divided the proceeding into three tracks. On July 3, 2020, the assigned Commissioner issued the Amended Scoping Memo and Ruling for Track 2 (Track 2 Scoping Memo). The Track 2 Scoping Memo directed the Energy Division to develop a staff proposal recommending potential solutions for the Track 2 issues. (Track 2 Scoping Memo at p. 5.) Relevant here, the scoped issues included development of methods to reduce barriers for microgrid deployment without shifting costs between ratepayers pursuant to Section 8371(b), which was enacted by SB 1339. (Track 2 Scoping Memo at p. 4.) On July 23, 2020, the assigned Administrative Law Judge issued a ruling requesting party comments on the Energy Division's *Staff Proposal for Facilitating the Commercialization of Microgrid Pursuant to Senate Bill 1339* (Staff Proposal).<sup>4</sup>

Consistent with Section 8371(b)'s directive to reduce barriers, Proposal 2 of the Staff Proposal addressed the IOUs' electric tariff Rules 18 and 19. (Staff Proposal at pp. 4.) In relevant part, these rules govern the supply of electricity provided by an IOU to separate premises and the resale of electricity provided by an IOU. Per Rules 18 and 19, electricity delivered by an IOU generally cannot be resold or supplied to different premise. The Staff Proposal identified that Rules 18 and 19 may be a barrier for microgrid developers who wish to maximize the use and benefit of their microgrid by supplying power to adjacent premises in the event of grid outages, either owned by them or someone else. (Staff Proposal at p. 8.) To address this barrier, the Staff Proposal recommended three options for revising Rules 18 and 19 related to the supply, not resale, of electricity to adjacent premises. (Staff Proposal at pp. 9-10.)

In its comments on the Staff Proposal, which referred only to SCE's Rule 18 for convenience, the Port recommended that Proposal 2 should be modified to address not only Rule 18 Section C (supply of electricity), but also Rule 18 Section E (resale of electricity). (*Port Opening Comments on July 23, 2020 Administrative Law Judge Ruling*

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<sup>4</sup> The Staff Proposal was included as Attachment 1 to the *Administrative Law Judge's Ruling Requesting Comment on the Track 2 Microgrid and Resiliency Strategies Staff Proposal, Facilitating the Commercialization of Microgrids Pursuant to Senate Bill 1339* (July 23, 2020.)

*Requesting Comment on Track 2 Microgrid and Resiliency Strategies Staff Proposal* at pp. 7-8 (Port Opening Comments).) SCE’s Rule 18 Section E at the time of the Port’s comments stated:<sup>5</sup>

Use by Others. A customer shall not charge for electricity received from SCE and used by another person, except: ...  
[listing the specific exceptions to this rule]

The Port’s comments stated that when “a microgrid includes a storage facility charged by a combination of electricity received from the IOU and electricity received from the microgrid’s own generator, the IOU can assert that the electricity withdrawn from the storage facility cannot be resold to another party [per Rule 18 Section E].” (*Id.* at p. 8.) The Port generally asserted that Rule 18 Section E’s prohibition on the resale of electricity in this scenario presents a barrier to microgrid development. (*Id.* at pp. 7-8.) The Port advocated for an exception to Rule 18 Section E so that owners of microgrids with storage charged in part by an IOU could resell the electricity to other customers on the microgrid. (See *id.*) The Decision did not adopt the Port’s proposal.

### III. DISCUSSION

#### A. The Decision does not violate Section 8371(b) by declining to revise to Rule 18 Section E.

The Port claims that the Decision violates Section 8371(b) enacted by SB 1339 because it fails to address an alleged barrier in Rule 18 Section E. (App. Rhrhg. at pp. 6-7.) The Port also cites to a legislative finding in SB 1339 as support for its claim. (App. Rhrhg. at p. 6.) In arguing that Rule 18 Section E is a barrier, the Port relies on its experience with an ongoing microgrid project and its statement that microgrids generally “can only succeed from a cost perspective if the major expense of generation and storage can be shared across significant loads, which often requires multiple customers.” (App. Rhrhg. at pp. 6-7.) The Port is incorrect that the Decision violated Section 8371(b) by declining to revise Rule 18 Section E.

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<sup>5</sup> Rules 18 and 19 have been subsequently revised in accordance with Ordering Paragraph 2 of the Decision.

Section 8371(b) broadly states that the Commission shall “[w]ithout shifting costs between ratepayers, develop methods to reduce barriers to microgrid deployment.” (§ 8371, subd. (b); see D.21-01-018 at p. 106 (COL 4).) In interpreting Section 8371(b), the “fundamental task is to ascertain the aim and goal of the lawmakers so as to effectuate the purpose of the statute.” (*McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 928 (*McAllister*).) The starting point for determining the meaning of a statute is the plain language, giving words their usual and ordinary meaning. (*Ibid.*) If the language is clear and unambiguous, the plain meaning of the language governs and the inquiry ends. (*Ibid.*; *Colony Cove Properties, LLC v. City of Carson* (2010) 187 Cal. App. 4th 1487, 1504.) On the other hand, if the language of a statute is unclear or ambiguous and permits more than one reasonable interpretation, various extrinsic aids may be considered to determine legislative intent, including legislative findings and declarations. (See, e.g., *Touche Ross & Co. v. State Bd. of Equalization* (1998) 203 Cal. App. 3d 1057, 1061-62, *McAllister, supra*, 169 Cal.App.4th at 928.)

Nothing in the plain language of Section 8371(b) requires or suggests that the Commission must remove or reduce all potential barriers to microgrid commercialization within its authority. Indeed, Section 8371(b) requires the Commission to “reduce barriers,” not “remove barriers” or “reduce all barriers.” Further, nothing in Section 8371(b) or any other provision of SB 1339 explicitly requires the Commission to revise Rule 18, let alone Section E of that rule. Moreover, Section 8371(b) limits the Commission’s actions to those that do not shift costs between ratepayers. Considering the above, Section 8371(b) does not mandate the Commission to remove or reduce all barriers, including potential barriers in Rule 18 Section E.

Although Section 8371(b) unambiguously does not require the Commission to remove or reduce all barriers to microgrid commercialization, we address the legislative finding cited by the Port in SB 1339, the bill authorizing Section 8371(b). SB 1339 Section 1(e) states:

The Public Utilities Commission, Independent System Operator, and State Energy Resources Conservation and Development Commission must take action to help transition the microgrid from its current status as a promising emerging technology solution to a successful, cost-effective, safe, and reliable commercial product that helps California meet its future energy goals and provides end-use electricity customers new ways to manage their individual energy needs.

Like Section 8371(b) itself, nothing in this finding of legislative intent cited by the Port indicates that the Commission must take any and all actions to reduce or remove barriers to microgrid commercialization. Instead, the finding directs the Commission, among other agencies, to take action to “help” microgrid commercialization. Our reading of this legislative finding thus comports with our reading of Section 8371(b), and courts generally will not disturb our interpretation of the Public Utilities Code unless it fails to bear a reasonable relation to the statutory purposes and language. (*Greyhound Lines, Inc. v. P.U.C.* (1968) 68 Cal.2d 406, 410-11 (*Greyhound*)).

Consistent with the general direction in both Section 8371(b) and SB 1339 Section 1(e), the Decision took several actions. For example, the Decision ordered the IOUs to revise their respective Rules 18 and 19 to allow microgrids owned by public agencies, or a third-party that primarily serves a facility operated by a public agency, to supply electricity to a critical facility operated by a municipal corporation on an adjacent premise to conduct emergency and/or critical operations during a grid outage. (D.21-01-018 at pp.27-36, 102-103 (FOF 9-14), 107-108 (COL 14 & 15), 112-113 (OP 2).) In addition, the Decision ordered SCE to amend its electric tariff Rule 2 to eliminate the potential for Commission approval of every added or special facilities microgrid project. (D.21-01-018 at pp. 17-18, 112 (OP 1).) The Decision also directed the IOUs to develop new microgrid tariffs to advance the availability and scale of microgrids. (D.21-01-018 at pp. 44-55, 113 (OP 4).) Accordingly, the Decision is consistent with the goals and directives of SB 1339 even though it did not order revisions to Rule 18 Section E, and the Port’s claim to the contrary is unfounded.

We also find the Port’s factual arguments in support of its claim that the Decision violated Section 8371(b) unpersuasive. The Port refers to its experience with a microgrid project that will be installed at its Joint Command and Control Center and run a low-voltage cable to the Jacobsen Pilot Service. (App. Rhrng. at pp. 4-6.) The project includes a photovoltaic system and battery energy storage system, which will be charged both by the photovoltaic system and SCE’s grid. (See App. Rhrng. at p. 8; Resolution E-5002 at p. 3.) The Port asserts its experience with this project demonstrates that microgrids with a storage facility charged by both an IOU and the microgrid generator potentially could be blocked because Rule 18 Section E generally prohibits the resale of electricity received from an IOU. (See App. Rhrng. at pp. 5, 6, 8.) Yet, the Port explains that the barrier to its microgrid project was overcome by a Commission-approved deviation from SCE’s Rule 18, which was a deviation from the rule’s Section C—not Section E. (See App. Rhrng. at p. 5; Resolution E-5002 at pp. 8, 11 (Findings 6 & 10).) In any event, Section 8371(b) does not require the Commission to reduce or eliminate all barriers to microgrid commercialization, including every potential barrier to each type of possible microgrid configuration.

Although we deny rehearing on Port’s above arguments, we modify Conclusion of Law 3 to accurately reflect the referenced statutory provision. Conclusion of Law 3 states: “California Public Utilities Code Section 8371 requires the Commission to commercialize microgrids.” Section 8371 actually provides the following:

The commission, in consultation with the Energy Commission and the Independent System Operator, shall take all of the following actions by December 1, 2020, to facilitate the commercialization of microgrids for distribution customers of large electrical corporations:

- (a) Develop microgrid service standards necessary to meet state and local permitting requirements.
- (b) Without shifting costs between ratepayers, develop methods to reduce barriers for microgrid deployment.
- (c) Develop guidelines that determine what impact studies are required for microgrids to connect to the electrical corporation grid.

(d) Without shifting costs between ratepayers, develop separate large electrical corporation rates and tariffs, as necessary, to support microgrids, while ensuring that system, public, and worker safety are given the highest priority. The separate rates and tariffs shall not compensate a customer for the use of diesel backup or natural gas generation, except as either of those sources is used pursuant to Section 41514.1 of the Health and Safety Code, or except for natural gas generation that is a distributed energy resource.

(e) Form a working group to codify standards and protocols needed to meet California electrical corporation and Independent System Operator microgrid requirements.

(f) Develop a standard for direct current metering in Electric Rule 21 to streamline the interconnection process and lower interconnection costs for direct current microgrid applications.

For consistency with Section 8371, we modify Conclusion of Law 3 as follows:

California Public Utilities Code Section 8371 requires the Commission, in consultation with the Energy Commission and the Independent System Operators, to take specific enumerated actions to facilitate microgrid commercialization for distribution customers of large electrical corporations to commercialize microgrids.

**B. The Decision is not arbitrary and capricious.**

The Port makes a variety of arguments alleging that the Decision is arbitrary and capricious. (App. Rhrng. at pp. 7-12.) We address the Port’s arguments and find no legal error, as discussed below.

**1. The Decision is not arbitrary and capricious because it revised Rule 18 Section C and not Rule 18 Section E.**

The Port argues that the Decision is arbitrary and capricious because it orders revisions to Rule 18 Section C but not Rule 18 Section E. (App. Rhrng. at p. 7.) The Port’s factual support for this claim appears to be that Rule 18 Section E “was the primary barrier to the development of the Port’s microgrid and will probably block any microgrid with storage which serves more than one entity.” (App. Rhrng. at p. 7.)

The scope of review under the arbitrary and capricious standard is narrow and a court will not substitute its judgment for that of the Commission. (See, e.g., *Motor Vehicle Manufacturers Assn. v. State Farm Mutual Insurance Co.* (1983) 463 U.S. 29, 43.) The Commission must only “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” (*Ibid.*, internal quotation and citation omitted.) A court will not deem a decision to be arbitrary or capricious unless the Commission entirely failed to consider a material and important issue, offered an explanation that unreasonably runs counter to the evidence, or is entirely implausible. (D.18-11-017 at p. 12, citation omitted.)

Based on these standards, the Port is incorrect that the Decision is arbitrary and capricious for addressing Rule 18 Section C but not Rule 18 Section E. The Decision’s determinations related to Rule 18 were based on an examination of the relevant data from the Energy Division’s Staff Proposal and “[a]ll proposals and comments submitted by parties” on the Staff Proposal. (D.21-01-018 at pp. 3, 27-36.) The Decision also provided a detailed and rational explanation for the ordered revisions to Rule 18, which were limited to the rule’s Section C. (D.21-01-018 at pp. 27-36.) The Port presents no legal basis to disturb the Decision’s reasonable and supported approach.

The Port also fails to demonstrate that Rule 18 Section E was a material issue to the Decision’s determinations, including those related to Rule 18 Section C. (See D.18-11-017 at p. 12.) As explained above, Rule 18 Section E was not material to the Decision’s determinations implementing Section 8371(b). In addition, the Port does not appear to allege that revisions to Rule 18 Section E were material to the Decision’s ultimate findings on Rule 18 Section C. In fact, the Port states that its proposed revision to Rule 18 Section E “would leave unchanged other portions of the Decision, including those portions dealing with Section C of Rule 18....” (App. Rhrng. at pp. 13-14.) Thus, the Port fails to show that Rule 18 Section E was material to the Decision on either a legal or factual basis.

**2. The Port’s alleged inconsistencies and inaccuracies do not render the Decision arbitrary and capricious.**

The Port makes a host of other arguments alleging the Decision was arbitrary and capricious. Each argument fails to establish legal error and is rejected in turn.

The Decision discusses that the requirements under Rules 18 and 19 and Section 218 ensure safe and reliable service and protect against unreasonable rates. (See, e.g., D.21-01-018 at pp. 29-24.) The Port cites to the Decision’s statement that “[w]ithout our oversight, there is no way to ensure that [private entities outside the Commission’s jurisdiction] operate their assets safely and reliably and are not charging unreasonable rates when providing this essential service.” (App. Rhr. at p. 10, emphasis omitted, citing D.21-01-018 at p. 32.) The Port alleges that this statement is arbitrary and capricious for two reasons. First, the Port claims that the Commission “may condition modifications to Section E of Rule 18 in such a manner as to protect the public interest in matters such as safety and reliability ... and prevent unreasonable rates.” (App. Rhr. at p. 11.) Second, the Port argues that this statement is internally inconsistent because the failure to address Rule 18 Section E may encourage municipal corporations and public agencies to become publicly owned utilities, which are unregulated by the Commission. (App. Rhr. at pp. 7, 11-12.)

The Port’s assertions do not amount to legal error. We already explained that Section 8371(b) does not direct the specific action of revising Rule 18 Section E and that Rule 18 Section E is not material to the Decision’s determinations. Additionally, the cited statement is not inconsistent with other parts of the Decision because the statement discussed private unregulated entities, not publicly owned utilities.

Next, the Port asserts that the Decision’s following statement is arbitrary and capricious: “Nor is this proceeding the appropriate venue to address any changes to established tariff rules that could impact many parties which, given the targeted focus of this proceeding on microgrid-related issues, have not intervened or been heard on this

matter.”<sup>6</sup> (App. Rhrgr. at pp. 9-10; D.21-01-018 at p. 31.) The Port argues that this proceeding is the appropriate proceeding to address Rule 18 as evidenced by the Staff Proposal and the Decision addressing this rule. (App. Rhrgr. at p. 10.) More generally, the Port argues that the statement is arbitrary and capricious because the Commission’s ability to regulate would be crippled if it could not proceed without entities which chose not to participate....” (App. Rhrgr. at p. 10.)

The Port appears to misunderstand the Decision’s statement and ignores the statement’s context. The Decision did not make any assertions that Rule 18 was out of scope. Rather, the Decision made this statement in the context of parties proposing to amend Rule 18 “in such a way to materially affect Section 218.” (D.21-01-018 at p. 31.) The Decision rejected these parties’ “push to permit – through this docket – the establishment of private utilities to sell power under contractual arrangements to nearby third-parties without any Commission oversight and without regard to the existing regulatory and legislative requirements that are reflected in Section 218 and other parts of the Public Utilities Code.” (D.21-01-018 at pp. 31-32.) As the Decision explained, such proposals went beyond the microgrid-related issues in this proceeding and, therefore, may have impacted stakeholders not party to this proceeding. (D.21-01-018 at p. 31.) In addition, while the Commission does not delay or halt its proceedings until every possible interested stakeholder is a party, the Commission is not prohibited from considering the implications of party proposals that go beyond the targeted focus of the proceeding. (See, e.g., D.13-07-003 at p. 34 [declining to adopt a party recommendation because it was out of scope of the proceeding and could violate due process rights].)

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<sup>6</sup> The Port also asserts that this statement is “particularly inappropriate and inconsistent” because the Decision relies on the definition of and processes for modifying the definition of “critical facilities” from Rulemaking (R.) 18-12-005. (App. Rhrgr. at p. 10.) The Port cites no legal authority for claiming that the Decision’s determination under these circumstances constitutes legal error. We note that the proposal to use the definition of critical facilities from R.18-12-005 originated from the Staff Proposal, which was subject to party comments. (Staff Proposal at p. 9; *Administrative Law Judge’s Ruling Requesting Comment on the Track 2 Microgrid and Resiliency Strategies Staff Proposal, Facilitating the Commercialization of Microgrids Pursuant to Senate Bill 1339* (July 23, 2020) at p. 5.) Thus, parties to this proceeding were afforded the opportunity to be heard on the definition of critical facilities.

Moreover, the Decision ultimately rejected proposals to modify Rule 18 in a manner that would have materially affected Section 218 due to conflicts with Section 218, not consideration of stakeholders absent from the proceeding. (D.21-01-018 at pp. 31-33.)

**C. The Decision does not violate Section 1705 and the substantial evidence requirement pursuant to Section 1757(a)(4).**

The Port alleges that the Decision violates Section 1705 and the substantial evidence requirement under Section 1757(a)(4) because the findings and conclusions do not address Rule 18 Section E, thereby ignoring the Port's repeated requests to address Section E. (App. Rhrng. at p. 12.) The Port elaborates that the Decision does not include an explanation of how a microgrid can utilize storage to serve another entity even if the microgrid meets the Decision's other criteria. (App. Rhrng. at p. 12.) The Port further alleges that the Decision's failure to address Rule 18 Section E is "particularly inexplicable" because the Commission has authorized exceptions to Rule 18 Section E in the past (e.g., some master-metered multifamily residential buildings, electric vehicle charging, and cold-ironing). (App. Rhrng. at pp. 12-13; see *id.* at p. 11.) Each of the Port's claims lack merit.

It is well-established that Section 1705 does not require the Commission to address each and every argument or piece of evidence advanced by a party in the findings and conclusions, or even in the discussion. (See, e.g., D.19-01-051 at pp. 48-49, D.16-12-070 at p. 14, D.93-11-024 [52 CPUC 2d 109, 1993 WL 777260 at p. \*4].) The statute mandates only that Commission decisions include findings of fact and conclusions of law on issues material to the decision's ultimate determinations. (See *Greyhound, supra*, 65 Cal.2d at 813, internal quotations and citations omitted; see also *Toward Utility Rate Normalization v. P.U.C.* (1978) 22 Cal.3d 529, 540; see also § 1705.) Section 1705 is broadly written and affords the Commission discretion in determining what issues are material to a decision based on the issues before it. (See, e.g., *California Motor Transport Co. v. P.U.C.* (1963) 59 Cal.2d 270, 275, *Clean Energy Fuels Corp. v. P.U.C.* (2014) 227 Cal.App.4th 641, 659.)

The Decision ultimately determined that revisions to Rule 18 should be limited to Section C and included a lengthy discussion and several findings and conclusions to support that determination. (D.21-01-018 at pp. 27-36, FOF 9-16, COL 4, 11, 14-17.) The issue regarding how the Commission weighed the various evidence before it, including the Port's proposed revisions to Rule 18 Section E, does not constitute a material issue that warrants specific findings of fact or conclusions of law within the requirements of Section 1705. (See D.19-01-051 at p. 49.) To find otherwise would require the Commission in every case to address all evidence in the proceeding, a result not intended by Section 1705. (*Ibid.*) Moreover, as we explained above in relation to the Port's arbitrary and capricious argument, the Port does not show that Rule 18 Section E was a material issue to the Decision's determinations on Rule 18 Section C from either a legal or factual standpoint. Considering the above, the Port fails to provide a basis to conclude that the Decision's lack of findings and conclusions related to Rule 18 Section E violated Section 1705.

The Port's substantial evidence argument also fails. A rehearing application must present analysis of relevant authority and explanation of how this authority applies to the facts to support a claim of legal error. (See, e.g., D.12-10-046 at pp. 10-11, D.17-08-015 at p. 4, § 1732.) The Port neither provides analysis of the substantial evidence standard nor an explanation of how this standard applies to the facts. Instead, the Port merely states that the substantial evidence standard "prohibits a decision if a reasonable person could not reach the conclusion reached by the Commission based on the evidence" and then asserts that the Decision's findings and conclusions do not discuss the impacts of Rule 18 Section E. (App. Rhrgr. at p. 12.) Accordingly, the Port does not demonstrate that the Decision was unlawful or erroneous.

Lastly, we address the Port's claim that the Decision's failure to address Rule 18 Section E is somehow unlawful because the Commission has authorized exceptions to Rule 18 Section E in the past. (App. Rhrgr. at pp. 12-13; see *id.* at p. 11.) Initially, the Port again fails to meet the requirements for specifying legal error in

rehearing applications. (See, e.g., D.12-10-046 at pp. 10-11, D.17-08-015 at p. 4, § 1732.) The Port does not provide analysis of, or even cite to, any legal authority suggesting that our decisions related to previous exceptions to Section E are relevant or controlling. Even assuming the Port had cited to relevant law, deviation from previous Commission decisions is not legal error. (*Postal Telegraph-Cable Co. v. Railroad Com.* (1925) 197 Cal. 426, 436.) In other words, simply because the Commission has granted exceptions to Rule 18 Section E in the past does not mandate us to do so here.

**D. The Decision does not ignore D.20-05-051’s definitions of critical facilities.**

The Port argues that the Decision’s use of the critical facilities list from D.19-05-042, which does not include maritime transportation, violates Section 727. (App. Rhrng. at p. 14.) Section 727 states, in part, that “[i]t is the policy of the state that the use of all waterways, ports and harbors of this state shall be encouraged....” (§ 727.) The Port also argues that reliance on D.19-05-042 violates Section 1757 and is arbitrary and capricious because the Commission modified D.19-05-042’s list of critical facilities in D.20-05-021 to include maritime transportation. (App. Rhrng. at p. 14.) The Port proposes that the Decision substitute “D.20-05-051” for “D.19-05-042” where it directs the use of the critical facilities list from D.19-05-042. (App. Rhrng. at p. 16; see D.21-01-018 at pp. 34-35.)

The Port misunderstands the Decision’s directive. The Decision did not limit the definition of critical facilities to those listed in D.19-05-042. The Decision directed the IOUs to “use the existing critical facilities [footnote] list and processes as adopted by D.19-05-042 *or in subsequent decisions*” when implementing the ordered revisions to their respective Rules 18 and 19. (D.21-01-018 at p. 34, italics added, citing D.19-05-042, Appendix A – Adopted Definitions.) In other words, the Decision directed the IOUs to use the critical facilities listed in D.19-05-042 as modified or superseded by any subsequent decisions or resolutions through the processes contemplated under D.19-05-042. D.20-05-051 is one such subsequent decision. Since the Decision’s

reference to D.19-05-042 necessarily implicates subsequent relevant decisions and resolutions, we do not find it necessary to modify the Decision as proposed by the Port.

**E. Conclusion of Law 11 should be modified to clarify the law.**

Conclusion of Law 11 states: “California Public Utilities Code Section 218, commonly referred to as the “over-the-fence rule,” requires any entity who wishes to sell energy to more than two contiguous parcels or across the street to become a regulated, electrical corporation as defined under Public Utilities Code Section 216.” (D.21-01-018 at p. 107 (COL 11).) The Port states that “municipal corporations” are not regulated by the Commission even if they otherwise meet the definition of “public utility” and proposes revisions to Conclusion of Law 11 to this end. (App. Rhrhg. at pp. 17-18.)

The Port is correct that municipal corporations are not subject to the Commission’s regulation under Section 218. However, we do not find it necessary to state this settled law in Conclusion of Law 11 considering that the Decision did not address whether the Commission can or should regulate municipal corporations or publicly owned utilities. Instead, and for consistency with the Decision’s accurate description of the “over-the-fence rule” on page 27, we modify Conclusion of Law 11 as follows:

11. California Public Utilities Code Section 218, commonly referred to as the “over-the-fence rule,” requires any entity who wishes to sell energy to more than two contiguous parcels or across the street to become a regulated, electrical corporation as defined under Public Utilities Code Section 216, with certain limited exceptions.

**F. The Port’s motion to file a reply to the IOU’s response to its rehearing application is denied.**

On March 18, 2021, the Port filed its *Motion for Leave to Reply and Reply to Joint Response of Investor-Owned Utilities to Application for Rehearing of Decision 21-01-018* (Motion). In the motion, the Port seeks leave to address one position taken by the IOUs’ in their joint response to the Port’s rehearing application: the Commission did not err in failing to address Rule 18 Section E because “remaining barriers can be

addressed in future phases of its regulatory proceeding.” (Motion at p. 4, citing *Joint Response of SCE, PG&E, and SDG&E to City of Long Beach Application for Rehearing of Decision 21-01-018* at p. 7.) In its reply, the Port states that it will withdraw Section III of its rehearing application (i.e., sections related to Rule 18 Section E), including the relief requested, if our order scopes Rule 18 Section E in either Track 3 or 4 of this rulemaking. (Motion at p. 4.)

The Port’s motion is denied. The Commission will not substitute its judgment for the expertise of the assigned Commissioner, Administrative Law Judge, and Energy Division staff who are immersed in this rulemaking and have worked collaboratively to shape the issues to be addressed in this proceeding. We decline to interfere with their efforts by requiring further consideration of Rule 18 at this point in time.

#### IV. CONCLUSION

For the reasons stated above, we have determined that good cause has not been demonstrated to grant rehearing of D.21-01-018, as no legal error has been shown. We modify Conclusions of Law 3 and 11 to clarify the law.

**THEREFORE, IT IS ORDERED** that:

1. D.21-01-018 is modified as follows:
  - a. Revise Conclusion of Law 3 to add the underlined language and delete the stricken language: California Public Utilities Code Section 8371 requires the Commission, in consultation with the Energy Commission and the Independent System Operators, to take specific enumerated actions to facilitate microgrid commercialization for distribution customers of large electrical corporations ~~to commercialize microgrids~~.
  - b. Revise Conclusion of Law 11 to add the underlined language: California Public Utilities Code Section 218, commonly referred to as the “over-the-fence rule,” requires any entity who wishes to sell energy to more than two contiguous parcels or across the street to become a regulated, electrical corporation as defined under Public

Utilities Code Section 216, with certain limited exceptions.

2. Rehearing of D.21-01-018 is denied.
3. This proceeding, Rulemaking 19-09-009, remains open.
4. This order is effective today.

Dated April 15, 2021, at San Francisco, California.

MARYBEL BATJER  
President  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
GENEVIEVE SHIROMA  
DARCIE L. HOUCK  
Commissioners