

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

Order Instituting Rulemaking to Review,
Revise, and Consider Alternatives to the
Power Charge Indifference Adjustment.

R.17-06-026
(Filed June 29, 2017)

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION, CENTRAL COAST
COMMUNITY ENERGY, EAST BAY COMMUNITY ENERGY, PENINSULA CLEAN
ENERGY, SILICON VALLEY CLEAN ENERGY AUTHORITY, AND CITY OF SAN
JOSÉ, ADMINISTRATOR OF SAN JOSÉ CLEAN ENERGY'S APPLICATION FOR
REHEARING OF DECISION 21-05-030**

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TABLE OF CONTENTS

I. INTRODUCTION AND SPECIFICATION OF LEGAL ERROR.....2

II. BACKGROUND4

 A. The PCIA Framework.....4

 B. Phase 2 Procedural History6

III. THE PHASE 2 DECISION VIOLATES PUBLIC UTILITIES CODE SECTIONS 366.2(g) AND 365.2 BY FAILING TO PROVIDE TO UNBUNDLED CUSTOMERS THE FULL BENEFITS OF RESOURCE ADEQUACY AND GHG-FREE RESOURCES IN THE IOUS’ PCIA PORTFOLIOS9

 A. Sections 366.2 and 365.2 Require the Commission to Provide Both Bundled and Unbundled Customers the Benefit of IOU Portfolio Resources Purchased on Their Behalf and Thereby Avoid Cost Shifts Between These Customers9

 B. In Rejecting the WG3 Proposals, the Commission Fails to Comply with Sections 366.2(g) and 365.210

 1. The Phase 2 Decision Fails to Provide the Benefit of Preferential Access to RA in the PCIA Portfolio Despite Its Clear Recognition of Value12

 2. The Phase 2 Decision Fails to Provide Any Benefits of GHG-Free Resources in the PCIA Portfolio.....14

 C. The Commission Must Grant Rehearing of the Phase 2 Decision Based on Its Failure to Proceed in the Manner Required by Law17

IV. THE DECISION’S UNDERLYING REASONING FOR REJECTING THE WG3 PROPOSALS REGARDING RA AND GHG-FREE EMISSIONS IS NOT SUPPORTED BY EVIDENCE, PRIOR COMMISSION DECISIONS, OR LOGIC.....18

 A. The Decision’s Conclusion That an Allocation Must Be Limited to Quantities Exceeding Bundled Needs is Not Justified or Supported by the Phase 1 Decision18

 1. Contrary to the Commission’s Conclusion, the Phase 1 Decision Assumed Excess and Uneconomic Resources Exist in IOUs’ Portfolios.....19

2.	Not Even PG&E Demonstrates That It Has No Excess or Uneconomic Resources in the PCIA Portfolio	20
3.	The Decision Incorrectly Applies the Phase 1 Decision to Require a Solution Based Solely on the Allocation of Resources in Excess of Bundled Customer Requirements	21
B.	The Decision Erroneously Rejects the RA VAMO on Grounds That a Similar Proposal For Including an “Option” or “Hedge” Value in the Market Price Benchmark Was Denied in the Phase 1 Decision	24
C.	The Existence of a CPE for Local RA Is Irrelevant and Should Have No Effect on the Adoption of a System and Flexible RA VAMO	25
D.	The Decision’s Vague and Sweeping Conclusions Regarding the Market, Rate, Planning, and Compliance Impacts of the RA VAMO Are Unsupported by Substantial Evidence as Required by Section 1757(a)(4)	26
V.	THE COMMISSION ABUSES ITS DISCRETION AND VIOLATES THE DUE PROCESS RIGHTS OF STAKEHOLDERS BY IGNORING DIRECTIVES IN D.18-10-019 AND REJECTING KEY ELEMENTS OF WG3’S PROPOSAL, ALLOWING THE PROCESS TO BE SUBVERTED	28
A.	The Commission Directed Work on Portfolio Optimization, Allocation and Auction Through a Collaborative Working Group Process	28
1.	The Co-Chairs Conducted a Thorough and Robust Working Group Process as Directed By the Commission	28
B.	The WG3 Report is a Negotiated, Consensus and Unified Proposal, Intended to Balance Parties’ Interests	31
1.	The Commission’s Assessment of Each Element of the WG3 Report Individually and the Application of a New Standard to Each Element For Review Contravenes the Phase 1 Decision	31
2.	The Commission Ignores the WG3 Report as “Evidence” of the Benefits of the Allocation and Market Offer Proposals.....	32
C.	The Commission Unfairly Allowed PG&E to Circumvent the WG3 Process	33
VI.	RELIEF REQUESTED.....	34

Specification of Legal Error

In adopting the Phase 2 Decision and rejecting key elements of the Working Group 3 proposal, the Commission:

- ✘ Failed to proceed in the manner required by law, as required by Public Utilities Code¹ Sections 1757(a)(2), 366.2(g), and 365.2, by failing to provide unbundled customers the full benefits of system and flexible RA in the IOUs' PCIA portfolios;
- ✘ Failed to meet the requirement of Section 1757(a)(4) by rejecting the RA VAMO without substantial evidence in light of the whole record;
- ✘ Failed to proceed in the manner required by law, as required by Public Utilities Code Sections 1757(a)(2), 366.2(g) and 365.2, by failing to provide unbundled customers the full benefits of GHG-Free energy in the IOUs' PCIA portfolios;
- ✘ Failed to meet the requirement of Section 1757(a)(4) by rejecting the GHG-Free Energy allocation by ignoring substantial evidence in light of the whole record of the value of this product to unbundled customers;
- ✘ Abused its discretion contrary to Section 1757(a)(5) by encouraging a collaborative Phase 2 working group process but ignoring the collaborative work product; and
- ✘ Violated the due process rights of stakeholders who relied to their detriment on the Commission's directive to create consensus proposals based on working group discussion and analysis.

¹ All references herein are to the Public Utilities Code unless otherwise specified.

TABLE OF AUTHORITIES

Page

California Legislative Materials

Assembly Bill 117..... 5

California Public Utilities Code

1757(a)(2) iii, 3, 4, 9
1757(a)(4) passim
1757(a)(5) iii, 4, 28
1757(a)(6) 28
365.2..... passim
366.2..... 9, 10
366.2(f)..... 5
366.2(g)..... passim

California Public Utilities Commission Decisions

D.02-11-022 4
D.06-07-030 4, 5
D.18-10-019 passim
D.19-10-001 8
D.20-06-002 25
D.21-05-030 1, 4

California Public Utilities Commission Rules of Practice and Procedure

Rule 1.8(d) 1
Rule 16.1 1

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APPLICATION FOR REHEARING OF DECISION 21-05-030**

The California Community Choice Association² (CalCCA), Central Coast Community Energy, East Bay Community Energy, Peninsula Clean Energy, Silicon Valley Clean Energy Authority, and City of San José, Administrator of San José Clean Energy (collectively, the “CCA Parties”) submit this Application for Rehearing (Application) of Decision (D.) 21-05-030 (Phase 2 Decision), pursuant to Rule 16.1 of the California Public Utilities Commission’s (Commission’s) Rules of Practice and Procedure.³ The Phase 2 Decision was voted out by the Commission on May 20, 2021 and issued on May 24, 2021.

² California Community Choice Association represents the interests of 22 community choice electricity providers in California: Apple Valley Choice Energy, Baldwin Park Resident Owned Utility District, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, City of San José, Administrator of San José Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

³ Pursuant to Commission Rule 1.8(d) of the Commission’s Rules of Practice and Procedure, Central Coast Community Energy, East Bay Community Energy, Peninsula Clean Energy, Silicon Valley Clean Energy, and City of San José, Administrator of San José Clean Energy, have authorized CalCCA to file this Application on their behalf.

I. INTRODUCTION AND SPECIFICATION OF LEGAL ERROR

The Phase 1 Decision revising the Power Charge Indifference Adjustment (PCIA), D.18-10-019, directed a “working group” to “develop proposals regarding portfolio optimization and cost reduction for future consideration by the Commission” in Phase 2.⁴ It further observed that “*allocation and auction* mechanisms offer realistic and promising approaches to utility portfolio optimization and cost reduction.”⁵ The Scoping Ruling for Phase 2 directed these issues to be addressed by Working Group 3 (WG3), including “the structures, processes, and rules governing portfolio optimization that the Commission should consider in order to address excess resources in utility portfolios....”⁶ The Scoping Ruling further tasked CalCCA, Southern California Edison Company and Commercial Energy (Co-Chairs) with leading and reporting the progress of the working group,⁷ stating the Commission’s expectation that parties will “work collaboratively.”⁸

Following a lengthy and resource-intensive process, outlined in Section II below, the Co-Chairs presented a Final Report to the Commission chronicling the working group process and offering a recommendation based on the collaborative work product (WG3 Report).⁹ The recommendations included voluntary allocation and market offer (VAMO)¹⁰ processes, as contemplated by the Phase 1 Decision, for local, system, and flexible Resource Adequacy (RA) and Renewable Portfolio Standard (RPS) products. It further contemplated an allocation process

⁴ D.18-10-019 (Phase 1 Decision), Conclusion of Law 26 at 159.

⁵ Phase 1 Decision, Finding of Fact 26 at 156 (emphasis supplied).

⁶ *Phase 2 Scoping Memo and Ruling of Assigned Commissioner*, Feb. 1, 2019 (Phase 2 Scoping Ruling) at 5.

⁷ *Id.* at 10.

⁸ *Id.* at 12.

⁹ *Final Report of Working Group 3 Co-Chairs: Southern California Edison Company (U 338-E), California Community Choice Association, and Commercial Energy*, Feb 21, 2021 (WG3 Report).

¹⁰ The WG3 Report used the term “Market Offer” rather than “auction” to refer to the potential sales frameworks, but both contemplate a sale of the PCIA resources to the highest bidder.

for greenhouse-gas free (GHG-Free) energy products.¹¹ These mechanisms aimed to minimize 366.2(g)resources in the PCIA portfolios by providing each customer – bundled and unbundled alike – proportional rights to “purchase” the products in the portfolio. In this way, the Co-Chairs anticipated that there would be no “excess” resources remaining in the portfolio, which resources would have been valued at zero.

Importantly, the mechanisms proposed in the WG3 Report achieve the stated goal of minimizing excess resources in a manner consistent with the statutes governing the PCIA. Through a “voluntary allocation” to both bundled and unbundled customers, the proposals contained in the WG3 Report would ensure unbundled community choice aggregator (CCA) customers receive the same rights as bundled customers to the full benefits of the products they fund through the PCIA, as required by Public Utilities Code Section 366.2(g). In turn, by providing CCA customers these benefits, the proposals would avoid violating the cost-shifting prohibition of Section 365.2; neither bundled nor unbundled customers would pay for benefits received by the other.

The Phase 2 Decision adopts some elements of the WG3 Report. The Phase 2 Decision also adopts the RPS VAMO mechanism proposed, recognizing the value of making this product proportionally available to load-serving entities (LSEs) serving unbundled customers. It declines, however, to provide unbundled customers *proportional* access to system and flexible RA products through the proposed RA VAMO. Likewise, it declines to provide unbundled customers *any* access to GHG-Free energy on a permanent basis by unnecessarily deferring the issue for a second time.

¹¹ The GHG-Free energy proposal included only voluntary allocation, with no auction or market offer.

By rejecting the RA VAMO and GHG-Free energy allocation, the Phase 2 Decision commits legal error in several respects. The Phase 2 Decision:

- ✘ Fails to proceed in the manner required by law, as required by Public Utilities Code Sections 1757(a)(2), 366.2(g), and 365.2, by failing to provide unbundled customers the full benefits of system and flexible RA in the investor-owned utilities (IOUs') PCIA portfolios;
- ✘ Fails to meet the requirement of Section 1757(a)(4) by rejecting the RA VAMO without substantial evidence in light of the whole record;
- ✘ Fails to proceed in the manner required by law, as required by Public Utilities Code Sections 1757(a)(2), 366.2(g) and 365.2, by failing to provide unbundled customers the full benefits of GHG-Free energy in the IOUs' PCIA portfolios;
- ✘ Fails to meet the requirement of Section 1757(a)(4) by rejecting the GHG-Free Energy allocation by ignoring substantial evidence in light of the whole record of the value of this product to unbundled customers;
- ✘ Abuses its discretion contrary to Section 1757(a)(5) by encouraging a collaborative Phase 2 working group process but ignoring the collaborative work product; and
- ✘ 1757(a)(5) by encouraging a collaborative Phase 2 working group process but ignoring the resulting collaborative work product; and
- ✘ Violates the due process rights of stakeholders who relied to their detriment on the Commission's directive to create consensus proposals based on working group discussion and analysis.

On these grounds, the CCA Parties respectfully request rehearing of D.21-05-030.

II. BACKGROUND

A. The PCIA Framework

The PCIA was originally designed by the Commission to ensure that customers leaving utility procurement service to take service from Electric Service Providers under Direct Access (DA) did not leave bundled IOU customers holding the bag for high-priced resources procured in the past for all customers.¹² In particular, the PCIA was designed to enable the IOUs to recover

¹² See generally D.06-07-030; see also D.02-11-022, Conclusion of Law 21 at 158.

the high costs of resources procured during the Energy Crisis of 2000-2001.¹³ The notion was that all customers – bundled and unbundled alike – would bear proportional responsibility for the above-market costs of these resources. The above market-costs would be netted against both the “value” to bundled customers of the resources they used, and the revenues received from the sale of resources not used by bundled customers.¹⁴

While the PCIA was originally conceived as a charge for DA customers, Assembly Bill 117 (2002)¹⁵ established a similar construct for customers leaving IOU procurement to be served by CCAs. Section 366.2(f) imposes the costs of resources procured on behalf of CCA customers before leaving the IOU; Section 366.2(g) requires the Commission to either (i) offset costs with the value of the resources used by bundled customers or sold in the market or (ii) directly allocate the benefits of the resources to CCA customers.

The PCIA framework, until Phase 2, relied solely on the first option: offsetting costs with the value of the resources to bundled customers or revenues from market sales.¹⁶ The “Market Price Benchmark” (MPB) became the valuation tool to meet the requirement of Section 366.2(g).¹⁷ The Phase 1 Decision slightly modified this approach, offsetting the above-market costs by the MPB for resources retained by the bundled customers but by actual market revenues for all other resources or attributes.¹⁸

Although none of the benefits of the above-market resources in the IOUs’ portfolios have historically been directly conferred to CCA customers pursuant to Section 366.2(g), the Phase 1 Decision took a step down this path. As discussed in Section II.B. below, the Commission

¹³ See generally D.02-11-022.

¹⁴ D.06-07-030, Ordering Paragraph 16 at 59-62.

¹⁵ Assembly Bill 117 (Stats. 2002, ch. 838).

¹⁶ See, e.g., D.06-07-030, Ordering Paragraph 16 at 59-62; the Phase 1 Decision.

¹⁷ See generally Phase 1 Decision.

¹⁸ *Id.*, Conclusion of Law 16 at 157-158.

contemplated that as a means of portfolio optimization and reducing costs, “allocation” of PCIA resources should be considered.¹⁹ The Commission stated: “*allocation* and auction mechanisms offer realistic and promising approaches to utility portfolio optimization and cost reduction.”²⁰

Based on this directive, WG3 headed down the path of developing an allocation and auction or “market offer” proposal as an alternative to valuation under Section 366.2(g). Indeed, the WG3 Report proposes making the products and attributes available directly to departing load customers as an alternative to direct valuation. In short, the use of allocation became a focal point of Phase 2.

B. Phase 2 Procedural History

After more than a year of activity, including oral argument and cross examination of witnesses, briefs, and numerous rounds of detailed party comments, the Commission issued D.18-10-019 in Phase 1 in October 2018 (Phase 1 Decision). The Phase 1 Decision resolved benchmark-related issues affecting the calculation of the PCIA calculation. But the Commission deferred important issues raised by parties to a second phase of the proceeding:

The second phase’s purpose is to develop structures, processes, and rules governing portfolio optimization going forward . . . The second focus of phase two will be to minimize further accumulation of uneconomic costs. . . . Phase two will also consider shareholder responsibility for future portfolio mismanagement, if any, so that neither bundled nor departing customers bear full cost responsibility if utilities do not meet established portfolio management standards.²¹

The Phase 1 Decision directed a “working group” to “develop proposals regarding portfolio optimization and cost reduction for future consideration by the Commission.”²² As noted above,

¹⁹ *Id.*, Finding of Fact 26 at 156.

²⁰ *Id.*, (emphasis supplied).

²¹ *Id.* at 111-112.

²² *Id.*, Conclusion of Law 26 at 159.

the Commission also observed that both *allocation and auction* mechanisms merited further enquiry.²³

The Scoping Ruling for Phase 2 directed these issues to be addressed by WG3. The ruling further tasked the Co-Chairs with leading and reporting the progress of the working group,²⁴ stating the Commission’s expectation that parties will “work collaboratively.”²⁵

The Co-Chairs conducted a lengthy and resource-intensive working group process. As the WG3 Report summarizes, the process involved thousands of hours contributed by stakeholders and Co-Chairs.²⁶ Their activities included more than 60 Co-Chair regular meetings, with meetings twice a week for the last three to four months leading up to the submission of the WG3 Report. The Co-Chairs conducted four stakeholder workshops in 2019, either in person or by phone, with three in San Francisco and one in Southern California. The Co-Chairs sought stakeholder comments after each workshop and provided opportunities for stakeholders to make presentations. The Co-Chairs submitted two progress reports in 2019, on June 24 and September 26. Then, on February 21, 2020, the Co-Chairs submitted the WG3 Report, summarizing the full course of the process and parties’ positions, accompanied by a recommendation supported by Co-Chair consensus. Parties also filed opening and reply comments on the WG3 Report, on March 13, 2020, and March 27, 2020. Finally, Southern California Edison Company (SCE) maintained a Sharepoint site as a repository of materials (workshop materials, Co-Chair work plan, meeting agendas, etc.) available to all parties.

²³ *Id.*, Finding of Fact 26 at 156 (emphasis supplied)

²⁴ Phase 2 Scoping Ruling at 10.

²⁵ *Id.* at 12.

²⁶ WG3 Report at 12-14.

The WG3 Report presented proposals for portfolio optimization and cost reduction as directed by the Phase 1 Decision and the Scoping Ruling.²⁷ The recommendation included VAMO²⁸ processes, as contemplated by the Phase 1 Decision, for local, system, and flexible RA and RPS products. It further contemplated an allocation process for GHG-Free energy products. These mechanisms aimed to minimize resources in the PCIA portfolios by providing each customer – bundled and unbundled alike – proportional rights to “purchase” the products in the portfolio. In this way, the Co-Chairs anticipated that there would be no “excess” – i.e., no unsold or unallocated – resources remaining in the portfolio. This was important to avoid the “zero” valuation of these resources in calculating the PCIA, as directed by D.19-10-001.²⁹

The mechanisms proposed in the WG3 Report achieve the stated goal of minimizing excess resources in a manner consistent with the statutes governing the PCIA. Through a “voluntary allocation” to both bundled and unbundled customers, the WG3 Report proposals intended to ensure that unbundled CCA customers and bundled customers alike receive the full benefits of the products they fund through the PCIA, as required by Section 366.2(g). In turn, by providing CCA customers these benefits, the WG3 Report proposals would avoid violating the cost-shifting prohibition of Section 365.2 because neither bundled nor unbundled customers would pay for benefits received by the other.

Following the receipt by the Commission of comments on the WG3 Report, concluding on March 27, 2020, no further action was taken by the Commission until the issuance of a proposed decision more than a year later, on April 5, 2021.

²⁷ See generally WG3 Report.

²⁸ See WG3 Report at 16. The WG3 Report used the term “Market Offer” rather than “auction” to refer to the potential sales frameworks, but both contemplate a sale of the PCIA resources to the highest bidder.

²⁹ See D.19-10-001, Ordering Paragraph 3.b. at 56 (adopting a zero value for unsold RPS), and Ordering Paragraph 3.e. at 56 (adopting a zero value for unsold RA).

III. THE PHASE 2 DECISION VIOLATES PUBLIC UTILITIES CODE SECTIONS 366.2(g) AND 365.2 BY FAILING TO PROVIDE TO UNBUNDLED CUSTOMERS THE FULL BENEFITS OF RESOURCE ADEQUACY AND GHG-FREE RESOURCES IN THE IOUS' PCIA PORTFOLIOS

The Phase 2 Decision violates Public Utilities Code Section 366.2(g), which guarantees CCA customers the full benefit of the resources for which they bear cost responsibility through the PCIA charge. CCA customers, like IOU bundled customers, pay equally for the RA and GHG-Free products in the PCIA portfolio; the Phase 2 Decision, however, provides only bundled customers preferential access to RA products and *no* access to GHG-Free energy on a long-term basis. By effectively requiring unbundled customers to pay equally for benefits only bundled customers receive, the Phase 2 Decision also violates the Section 365.2 prohibition against cost-shifting among unbundled and bundled customers. Consequently, and contrary to Section 1757(a)(2), in issuing this decision, the Commission has not “proceeded in the manner required by law.”

A. Sections 366.2 and 365.2 Require the Commission to Provide Both Bundled and Unbundled Customers the Benefit of IOU Portfolio Resources Purchased on Their Behalf and Thereby Avoid Cost Shifts Between These Customers

Sections 366.2(g) and 365.2 work together to ensure that *all* IOU bundled customers *and* departed load customers get what they pay for. Section 366.2(g) requires that:

[e]stimated net unavoidable electricity costs paid by the customers of a [CCA] shall be reduced by the value of any benefits that remain with bundled service customers, unless the customers of the [CCA] are allocated a fair and equitable share of those benefits.³⁰

As a result, the Commission may provide CCA customers either an offset against costs for the value of the resources retained by the IOU or “a fair and equitable share of those benefits.”

³⁰ Cal. Pub. Util. Code § 366.2(g).

Similarly, Section 365.2 is intended to prevent inequitable cost shifting between IOU bundled customers and departed customers:

The commission shall ensure that bundled retail customers of an electrical corporation do not experience any cost increases as a result of retail customers of an electrical corporation electing to receive service from other providers. The commission shall also ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load.³¹

This cost shift occurs, for example, if the benefits retained by bundled customers are not accurately valued, such that departed load costs increase beyond their proportional share of PCIA portfolio costs. Both statutes bear directly on the Commission's rejection of key proposals in the WG3 Report, as discussed below.

B. In Rejecting the WG3 Proposals, the Commission Fails to Comply with Sections 366.2(g) and 365.2

WG3 developed its proposals to achieve compliance with Sections 366.2(g) and 365.2. The direct allocation of the benefits from the IOUs' portfolios would ensure that all customers – bundled and unbundled – receive their proportional share of benefits, thus averting a cost shift between customers.

All customers – bundled and unbundled – pay the above-market costs of the PCIA portfolio in proportion to their vintaged load shares. Consequently, the Commission must provide unbundled customers their proportional benefits from the portfolio, either by (i) a direct allocation of the benefits or by (ii) valuing the benefits provided to bundled customers and crediting that value against stranded costs. Until Phase 2, the Commission attempted to take the latter route, creating MPBs to establish values for benefits provided to bundled customers. The

³¹ *Id.*, § 365.2.

WG3 Report proposals, taking a cue from the Phase 1 Decision’s directive to consider “allocation,” pursue the former route of in-kind benefits.

It is possible to use either approach to balance benefits between bundled and unbundled customers; the direct allocation route, however, captures more of the value of the PCIA products – in particular, preferential access or the “right of first refusal” to these products. Critically, in the context of the Phase 2 Decision, the direct allocation route is the only way to achieve the goal of minimizing excess resources in the PCIA portfolios while ensuring that the benefits are proportionally shared as required by Section 366.2.

The WG3 Report contains a framework attributing portfolio resources to those customers paying for them. After considering an “excess sales approach” versus an “allocation based approach” to reducing excess resources in the PCIA portfolios, WG3 chose the allocation approach for each PCIA-eligible LSE “based upon the proportional share of the IOU’s entire-PCIA eligible, vintaged position.”³² As stated in the WG3 Report, “allocations ensure that all attributes are appropriately distributed among all LSEs, so their customers are able to realize the value they are paying for.”³³ The intent of the WG3 Report is therefore to confer upon all customers who pay the PCIA the full benefits of the PCIA-resources, as required by Sections 366.2(g) and 365.2.

In denying CCA customers access to the RA and GHG-Free Energy resources as proposed by WG3, the Commission retains the status quo that has proved unworkable and in fact violates state law. As discussed below, the Phase 2 Decision denies unbundled customers preferential access to their proportional share of RA resources and denies them *any* access to their share of the value of the GHG-Free attribute of certain energy resources. Without clear

³² WG3 Report at 15.

³³ *Id.*

explanation, the Phase 2 Decision adopts the same VAMO structure for RPS resources, implicitly acknowledging the value of this mechanism. The Phase 2 Decision will result in unbundled CCA customers paying for both RA benefits and GHG-Free Resources for which they receive inadequate cost reduction and insufficient benefit, violating the prohibition in Section 365.2 against cost shifting.

1. The Phase 2 Decision Fails to Provide the Benefit of Preferential Access to RA in the PCIA Portfolio Despite Its Clear Recognition of Value

To properly distribute the inherent value of preferential access to IOU RA resources, which is currently held by bundled customers only, the WG3 Report included a voluntary allocation to LSEs of each IOU's system and flexible RA resources, followed by a market offer of unallocated amounts (RA VAMO). In addition to conforming with existing law, the aim was to minimize the amount of "excess" – unsold – resources left in the IOU portfolios and valued at zero. However, in the Phase 2 Decision the Commission determined that it "do[es] not have sufficient evidence of an observable and verifiable 'right of first refusal' benefit retained by bundled customers that would justify modifying PCIA calculations or requiring allocations of [RA] resources."³⁴ CalCCA described the preferential access bundled customers, through the IOUs, enjoy to the IOUs' portfolio's RA resources as a "right of first refusal" (ROFR). As CalCCA explained, this term simply describes the ability of each IOU (for the benefit of its bundled customers) to use existing RA resources for compliance. That such ability currently resides with the IOUs for the benefit of their bundled customers is uncontroverted and is, in fact, reinforced by the Phase 2 Decision.

³⁴ Phase 2 Decision at 43.

Whatever name is applied to this right, the Commission clearly recognized the inherent value such preferential access confers on the IOU and its bundled customers. For example, the Commission cites to Pacific Gas and Electric Company's (PG&E's) concerns that, if adopted, the RA VAMO "would leave PG&E with insufficient resources to meet bundled customer needs and would increase electric portfolio costs for bundled service and departing load customers alike."³⁵ Thus, the IOU implicitly asserts, and the Commission apparently agrees, that the IOU's bundled customers' needs are preeminent. It is obvious the bundled customers' position as "first in line," whatever name is used to describe it, has value; otherwise, the Commission would not have reserved this right for bundled customers.

PG&E's concern points to another issue. Although the MPB was intended to reflect market prices, the Commission has tacitly admitted that if RA resources were proportionally allocated, PG&E would need to acquire more RA for compliance purposes and would likely face prices that are higher than the actual benchmark. If requiring the IOUs to go into the market to procure RA resources for bundled customers will *increase* their costs, then it follows that the MPB is *below* actual market prices. If the MPB is a fair representation of market prices, all customers, including bundled customers, should be indifferent to paying the MPB or market prices. The fact that the Commission agrees with PG&E's stated concerns actually confirms that there is definite value in being "first in line."

Whether that value can be quantified, and whether it is currently accounted for in the PCIA methodology, are separate and difficult questions. It is precisely because of this difficulty the WG3 Co-Chairs devised the VAMO process for system and flexible RA resources. In order

³⁵ *Id.* at 44, citing *Opening Comments of Pacific Gas and Electric Company (U 39 E) on the Power Charge Indifference Adjustment Phase 2, Working Group #3 Final Report*, Mar. 13, 2020 (PG&E's WG3 Proposal Opening Comments).

to achieve a fair distribution of the value inherent in the bundled customers' current "first in line" position, these RA resources – and that concomitant "first in line" position – should be subject to proportional allocation among LSEs.

2. The Phase 2 Decision Fails to Provide Any Benefits of GHG-Free Resources in the PCIA Portfolio

In addition to failing to provide CCA customers with the benefit of preferential access to their proportional share of RA resources, the Phase 2 Decision also fails to order the allocation of benefits of GHG-Free Resources in the PCIA portfolio to unbundled customers.³⁶ The Commission had previously rejected CalCCA's proposal in Phase 1 of this proceeding that would have recognized the value of GHG-Free energy through a credit in the PCIA calculation.³⁷ The Commission rejected the proposal, due largely to the lack of robust market price data to provide a reference value, but also invited further consideration of this issue.³⁸ The WG3 Proposal, therefore, provided an alternative method to value GHG-Free energy through a direct allocation to unbundled customers. The value of GHG-Free energy to LSEs was explained in the WG3 Report as being able to show "GHG-free energy procurement on an LSE's [Power Content Label with the California Energy Commission] and for planning purposes in the IRP."³⁹

³⁶ The Commission found that it "do[es] not have a sufficient record to support adoption or rejection of the WG3 Proposal or an alternate proposal at this time. We will consider as a next step in this proceeding whether GHG-Free resources are under-valued in the PCIA methodology, and whether to adopt a GHG-Free adder or an allocation mechanism." Phase 2 Decision at 54.

³⁷ See Phase 1 Decision at 148.

³⁸ *Id.* at 150-52.

³⁹ WG3 Report at 30-32.

a. Approval and Extension of the Interim Allocation Acknowledges that GHG-Free Resources Have Value

The Commission approved the requests of SCE and PG&E to implement interim GHG-Free energy allocations to LSEs pending the outcome of Phase 2.⁴⁰ These allocations are substantially similar to the WG3 Proposal.⁴¹ In addition, the Phase 2 Decision *extends* the SCE interim allocation for an additional year.⁴² These actions tacitly acknowledge the value in making GHG-Free Resources available proportionally to all LSEs. Indeed, stakeholders recognize this value, as well. During the period January 1 through December 1, 2020, nineteen contracts for GHG-Free energy sales were entered into between PG&E and various LSEs pursuant to PG&E’s interim allocation.⁴³ Notwithstanding the Commission’s recognition of the value of GHG-Free Resources by approving these interim measures, the Commission then ignores this recognition by rejecting the permanent GHG-Free allocation proposed by the WG3 Proposal and deferring the issue to another phase.

⁴⁰ See Resolution E-5046 (approving PG&E’s proposal to make one-year allocations of nuclear and hydroelectric resources available to LSEs in 2019 and 2020); Resolution E-5111 (extending PG&E program through 2023); Resolution E-5095 (approving SCE’s interim program).

⁴¹ See PG&E Advice Letter (AL) 5705-E, Dec. 2, 2019 (adopted by Commission Resolution E-5046, in which PG&E sought to add Appendix P to its Bundled Procurement Plan (BPP) allowing LSEs to be eligible to purchase “Carbon Free Energy” from nuclear and large hydroelectric resources in PG&E’s portfolio because “[p]arties in the PCIA proceeding have raised the issue of how the value of GHG free resources that have their above market costs recovered through the PCIA should be optimized and subsequently reported for the California Energy Commission’s (CEC) Power Content Label...” and “PG&E developed Appendix P (Carbon Free energy) to address these issues...”); *see also* SCE AL 4194-E, Apr. 17, 2020 (adopted by Commission Resolution E-5095, in which SCE, submitting the advice letter jointly with Clean Power Alliance, proposes to add a Tariff Sheet to SCE’s BPP that enables LSE’s operating in SCE’s service territory whose customers pay the PCIA and CTC to receive allocations of GHG-Free energy at no additional cost from SCE’s bundled portfolio as an interim mechanism until the Commission adopts a permanent allocation mechanism).

⁴² Phase 2 Decision, Ordering Paragraph 12 at 67.

⁴³ *PG&E Application for Compliance Review of Utility-Owned Generation Operations, Portfolio Allocation Balancing Account Entries, Energy Resource Recovery Account Entries, Contract Administration, Economic Dispatch of Electric Resources, Utility-Owned Generation Fuel Procurement, and Other Activities For the Period January 1 Through December 31, 2020, Prepared Testimony*, Mar. 1, 2021, at 9-10, 9-11, and Table 9-1.

b. Notwithstanding Recognition of the Value of GHG-Free Resources, the Commission Fails to Provide Unbundled Customers Any GHG-Free Benefits

The Phase 2 Decision states that it does not have sufficient evidence of heightened market value for GHG-Free Resources at this time, and therefore postpones consideration of the allocation of GHG-free resources to the next step in this proceeding. However, the Phase 2 Decision accepts the argument of CalAdvocates that allocating GHG-Free energy to all customers would “result in higher rates for bundled customers.”⁴⁴ By stressing the value of allowing bundled customers to retain these GHG-Free resources, the Phase 2 Decision therefore confirms that GHG-Free energy confers a distinct value. Again, as with the RA allocations, this means that the current MPB methodology, which does not include a GHG-Free energy value, is understating portfolio value and benefitting bundled customers at unbundled customers’ expense. The Commission therefore again fails to allow the proportional allocation of PCIA resource benefits to avoid having bundled customers face higher rates, thereby implicitly increasing the cost to unbundled customers. In this way, the Commission consistently and unlawfully fails to adopt the allocation of benefits to unbundled customers required by Section 366.2(g), which also results in unlawful cost shifting pursuant to Section 365.2.

c. Contrary to PG&E’s Claim, GHG Emitting Resources Provide No “Benefits” Beyond the Brown Power Value Already Litigated and Recognized in the Market Price Benchmark

One of the justifications in the Phase 2 Decision for not adopting the WG3 GHG-Free allocation is PG&E’s concern that PCIA-eligible LSEs should be required to take their combined share of both GHG-Free and GHG-emitting resources.⁴⁵ The Phase 2 Decision fails to recognize, however, that GHG-emitting resources provide no “benefits” to LSEs beyond the “brown power”

⁴⁴ Phase 2 Decision at 51.

⁴⁵ *Id.* at 52.

value that has already been litigated, and is currently recognized in the MPB. In addition, PG&E does not identify any additional “benefit” that requires allocation under Section 366.2(g).

Therefore, the Commission cannot lawfully rely on this argument in rejecting the GHG-Free allocation.

d. An In-Kind Allocation of GHG-Free Energy Does Not Require a Quantified Value, Unlike a GHG-Free Adder to the MPB

While deferring the GHG-Free allocation to the “next step in this phase of this proceeding,” the Commission states that it will consider “whether GHG-Free resources are under-valued in the PCIA methodology, and whether to adopt a GHG-Free adder or an allocation mechanism.”⁴⁶ The Commission fails to recognize, however, that an in-kind allocation of GHG-Free Energy through allocation does not require a quantified value, unlike a GHG-Free adder to the MPB. The value of access to these products is implicitly captured in the right to receive a proportional allocation from the PCIA portfolio; if there is value, presumably customers will take their allocation, if there is no value, they will not.

C. The Commission Must Grant Rehearing of the Phase 2 Decision Based on Its Failure to Proceed in the Manner Required by Law

The Phase 2 Decision’s rejection of the RA and GHG-Free allocations to unbundled customers results in the Commission unlawfully adopting policies that allow a ROFR benefit to IOU bundled customers of access to RA and GHG-Free resources. Such policies violate Section 366.2(g) and its guarantee that unbundled CCA customers receive the benefits that they pay for in the PCIA, as well as Section 365.2 and its prohibition of unlawful cost shifting from unbundled to bundled customers. For these reasons, the Commission should grant rehearing of

⁴⁶ *Id.* at 54.

the Phase 2 Decision and adopt the proportional allocation of RA and GHG-Free resources among bundled and unbundled customers.

IV. THE DECISION’S UNDERLYING REASONING FOR REJECTING THE WG3 PROPOSALS REGARDING RA AND GHG-FREE EMISSIONS IS NOT SUPPORTED BY EVIDENCE, PRIOR COMMISSION DECISIONS, OR LOGIC

The Phase 2 Decision is unsupported by the substantial evidence in the record, prior Commission decisions, or logic. The determination that any allocations must be limited to quantities exceeding bundled customer needs is not supported by the Phase 1 Decision. Second, the Commission’s rejection of the RA VAMO based on its claim of the similarity to the proposal rejected in the Phase 1 Decision regarding the “inherent hedge and option value” in the MPB is erroneous based on the record. Third, the Commission’s rejection of the system and flexible RA VAMO based on the existence of the new CPE for local RA is erroneous given the irrelevance of the CPE to system and flexible RA. Finally, the Commission’s sweeping conclusions regarding the market, rate, planning, and compliance impacts of the RA VAMO are unsupported by substantial evidence in the record. As these erroneous determinations by the Commission are not “supported by substantial evidence in light of the whole record” as required by Section 1757(a)(4), rehearing must be granted.

A. The Decision’s Conclusion That an Allocation Must Be Limited to Quantities Exceeding Bundled Needs is Not Justified or Supported by the Phase 1 Decision

Notwithstanding the clear intent of the Phase 1 Decision, the Commission inexplicably and illogically denies WG3’s proposals regarding RA and GHG-Free resources. The Commission mistakenly determines that insufficient evidence has been presented to establish the Commission’s goal of reducing “excess and/or uneconomic resources.” The Commission also mistakes how to define such “excess” resources, which the Commission determines are only

those “resources that are not necessary to meet bundled customers’ needs and compliance requirements.”⁴⁷ These determinations are unsupported by substantial evidence.

The Commission erroneously adds a “standard of review” to proposals under Phase 2 that first requires the proponent to submit evidence of “excess and/or uneconomic resources” in the IOUs’ portfolios. This was never envisioned in the Phase 1 Decision’s direction for the next phase of the enquiry. In fact, this is contrary to the presumption underlying Phase 2 itself – that there exist resources in the IOUs’ portfolios that are uneconomic, and that are neither needed for compliance or desired by the market. The Commission misapplies prior Commission decisions by permitting under its new standard of review for Phase 2 only those solutions that deal exclusively with these “excess and/or uneconomic” resources. This standard of review includes a tautology the Co-Chairs identified and sought to redress: it begs the question of what resources fit the Commission’s new definition of “excess resources” as “resources that are not necessary to meet bundled customers’ needs and compliance requirements.”⁴⁸ If it were straightforward to establish those “needs,” WG3 would not have proceeded with the allocation and market offer constructs it developed. This tautology reveals the Commission’s error in interpreting the Phase 1 Decision. In denying the WG3 Reports’ solutions for RA and GHG-Free resources, the Commission fails to achieve the goal of this proceeding.

1. Contrary to the Commission’s Conclusion, the Phase 1 Decision Assumed Excess and Uneconomic Resources Exist in IOUs’ Portfolios

The Phase 2 Decision states that as an initial matter the Commission must “consider whether the RA proposal advances the goal of reducing excess and/or uneconomic resources in utilities’ PCIA portfolios. Parties did not provide sufficient evidence in this proceeding to

⁴⁷ Phase 2 Decision at 14.

⁴⁸ *Ibid.*

establish whether each IOU will have excess and/or uneconomic resources.”⁴⁹ This statement directly contravenes the Phase 1 Decision.

In the Phase 1 Decision the Commission initiated the second phase precisely because it assumed the existence of “excess and/or uneconomic resources.” The Commission stated the goals of Phase 2: “We are initiating a second phase of this rulemaking that offers the promise of meaningful progress toward reducing the levels of above-market costs going forward.”⁵⁰

Further, the Commission explicitly stated its recognition “that parts of the IOU portfolio are in excess of bundled customers’ needs,” such that “phase two of this proceeding will work toward portfolio optimization and cost reduction.”⁵¹ Finally, the Commission flatly affirmed the existence of uneconomic costs, stating: “The second focus of phase two will be to minimize further accumulation of uneconomic costs.” (emphasis supplied) ⁵² Inexplicably, the Commission now requires there to be “evidence” of these excess and/or uneconomic costs.

2. Not Even PG&E Demonstrates That It Has No Excess or Uneconomic Resources in the PCIA Portfolio

Not only does the Commission overthrow the Phase 1 Decision by now requiring “evidence” of these excess resources, it goes even further. The Commission defers to untested and unverified statements from PG&E to find that there are, in fact, no “excess resources” to deal with. The Commission actually justifies the denial of the RA elements of the WG3 Report based on PG&E’s comments, which “indicate that it will not have excess resources.”⁵³ Although the statement strains credulity and contradicts the Commission’s findings in Phase 1, the Commission simply defers to PG&E’s explanation “that it has actively managed its RA portfolio

⁴⁹ *Id.* at 41.

⁵⁰ Phase 1 Decision at 129.

⁵¹ *Id.* at 50.

⁵² *Id.* at 112.

⁵³ Phase 2 Decision at 41.

to sell excess products in response to departed load, and also considered forecasted load departure in determining incremental procurement quantities.”⁵⁴ Significantly, PG&E has not provided any “evidence” of its claims, yet the Commission accepts these claims without question.

3. The Decision Incorrectly Applies the Phase 1 Decision to Require a Solution Based Solely on the Allocation of Resources in Excess of Bundled Customer Requirements

Referring to the Co-Chairs’ proposals to allocate IOU PCIA-eligible resources to other LSEs to the extent such are “excess to the bundled customers’ share of the portfolio,” the Commission determines, without justification, that “CalCCA’s interpretation of ‘excess resources’ conflicts with the plain language of our decision.”⁵⁵ This determination misconstrues the Phase 1 Decision.

The Commission apparently bases its conclusion on this statement taken out of context from the Phase 1 Decision: “[r]ecognizing that parts of the IOU portfolio are *in excess of bundled customers’ needs*, Phase two of this proceeding will work toward portfolio optimization and cost reduction” (emphasis supplied).⁵⁶ The Commission mistakenly uses this phrase to define as “excess,” and therefore subject to any proposed solution to come out of Phase 2, as “excess to bundled customers’ needs.” The Commission thereby imposes a limitation on the type of solutions that may be implemented through Phase 2. The Commission’s decision is faulty. Nothing in the Commission’s prior decision regarding what resources would be considered for Phase 2 limits those resources only to “excess.”

⁵⁴ *Ibid.*

⁵⁵ *Id.* at 12.

⁵⁶ *Id.*, quoting Phase 1 Decision at 59.

In addition, the Commission’s focus on this “plain language” ignores numerous other references in the Phase 1 Decision, and more importantly a Conclusion of Law, that “excess resources” encompass all of an IOU’s PCIA-eligible resources. The “plain language” that excess resources “are in excess of bundled customer needs” appears only once in the Phase 1 Decision in a section discussing the ratemaking treatment of legacy utility-owned generation (UOG).⁵⁷ It is this one reference, appearing in a section of the decision unrelated to the issue of allocation, that the PD extrapolates to the entirety of the Phase 1 Decision.⁵⁸

In other parts of the decision, however, the Phase 1 Decision clearly uses the term “excess resources” to refer to all of the IOU’s PCIA-eligible resources. For example, in rejecting the Joint Utilities’ proposal in which all of the IOU’s “RA and [renewable energy credit] REC attributes are allocated pro rata to the LSEs serving departing load customers,”⁵⁹ the Phase 1 Decision described this approach as offering to resolve the issue of “excess resources in the Joint Utilities’ portfolios to serve a declining customer base.”⁶⁰ Similarly, when describing Commercial Energy’s Voluntary Allocation and Auction Clearinghouse (VAAC) proposal (discussed further below) which also would have proportionately allocated all of the IOU’s resources (not just excess), the Phase 1 Decision once again described this proposal as replacing the MPB “with other means of valuing the excess resources in the portfolios”⁶¹ of the IOUs and that it “encourages LSEs to participate and accept or bid for excess IOU’s resources.”⁶²

⁵⁷ Phase 1 Decision at 59.

⁵⁸ The phrase “excess resources” appears 22 times in the Phase 1 Decision. In addition to the excerpts cited in these comments there are two references to the treatment of “excess resources” in triuing-up the MPB (at 123 and 137); two regarding the issue of securitization (at 100); eight times in direct citations to other parties (at 18, 22, 24, 54, 57, 67, and 100) and twice regarding Commercial Energy’s proposal, which proposed a proportional allocation of all of the IOU’s resources (at 20, 22).

⁵⁹ Phase 1 Decision at 91.

⁶⁰ *Id.* at 93-94.

⁶¹ *Id.* at 20.

⁶² *Id.* at 22.

Equally important, while the Phase 1 Decision refers to a follow-up proceeding to address “excess resources,” it is again not defined.⁶³ Indeed, the need to address “excess resources” in Phase 2 is not even carried over to any of the Findings of Fact, Conclusions of Law, or Ordering Paragraphs. The Phase 1 Decision’s guidance for Phase 2 was “to consider proposals for a ‘working group’ process to enable parties to continue working together to develop proposals regarding portfolio optimization and cost reduction for future consideration by the Commission.”⁶⁴ It contained no mention of the term “excess resources.” It is only later in the Phase 2 Scoping Ruling that the direction to focus on “excess resources” again appears,⁶⁵ and once again is never defined.

Further support for the contention that the Phase 1 Decision’s understanding of the term “excess resources” was sufficiently broad enough to encompass all of the IOU’s resources can be seen from the decision’s unique treatment of Commercial Energy’s VAAC proposal. The Phase 1 Decision specifically called out this proposal for further development in a Conclusion of Law.⁶⁶ It is unclear how this Conclusion of Law could be implemented without “excess resources” being defined broadly consistent with Commercial Energy’s proposal “[a]s applied to the PCIA context... that the first step be a voluntary allocation to LSEs of all PCIA-eligible IOU resources”⁶⁷ with the next step “a voluntary auction of the remaining resources.”⁶⁸ As the VAAC proposal was based on the Commission’s own treatment of Core Transport Agents (the natural gas version of CCAs) being eligible for a proportional allocation of all of the natural gas

⁶³ *Id.* at 3, 71.

⁶⁴ *Id.*, Conclusion of Law 26 at 159.

⁶⁵ Phase 2 Scoping Ruling at 5.

⁶⁶ Phase 1 Decision, Conclusion of Law 8 at 157.

⁶⁷ *Opening Brief of Commercial Energy of California*, June 1, 2018, at 4 (emphasis supplied).

⁶⁸ Phase 1 Decision at 22.

IOU's resources, an approach the Commission approved in its Gas Accord V decision,⁶⁹ the Commission would have been well aware of the proposed mechanics to allocate all of the IOU's resources.⁷⁰

Accordingly, the Commission erred in concluding that the Phase 1 Decision precluded the Commission's consideration of an allocation of all resources in Phase 2. Ironically, the Commission itself did not feel bound by this restriction with respect to RPS, choosing to allocate all of the IOU's PCIA eligible RPS resources. Why this restriction applies to RA and GHG-Free resources, but not to RPS resources, is unexplained.

Finally, in discussing the excess standard it has just imposed, the Commission actually notes that at any given time "effective solutions with the foregoing [required] attributes may result in disposition of more or less resources than the excess amount needed to serve bundled customers' needs over time."⁷¹ Thus, inconceivably, even the Commission apparently realizes limiting solutions to its narrow definition of "excess" excludes potential workable and effective solutions.

B. The Decision Erroneously Rejects the RA VAMO on Grounds That a Similar Proposal For Including an "Option" or "Hedge" Value in the Market Price Benchmark Was Denied in the Phase 1 Decision

In the Phase 1 Decision the Commission grappled with the issue of whether, or how to, incorporate the "inherent hedge and option value" in long-term contracts in the brown power market price benchmark, and ultimately decided not to attempt including this value in the benchmark.⁷² In the Phase 2 Decision, the Commission claims the same arguments exist with

⁶⁹ D.11-04-031, Finding of Fact 27 and Ordering Paragraph 1 at 66, 72.

⁷⁰ Appendix A to the Gas Accord provides a numerical example of how this process works which is almost identical to the VAMO process proposed by the working group.

⁷¹ Phase 2 Decision at 12.

⁷² Phase 1 Decision at 35.

respect to the “option” or “hedge” value that CalCCA has continued to argue should be recognized in the IOUs’ RA portfolios.⁷³ Because the situations are entirely dissimilar, the Commission errs in rejecting the RA VAMO on these grounds.

As noted, the question in the Phase 1 Decision was whether the current market price benchmark for brown power adequately takes into account the inherent value of long-term positions. Assigning value to this attribute gave the Commission difficulty, and it ultimately decided it could not quantify this value to “bake it in” to the benchmark.

The current question, however, is not the “value” of an option, but whether *an allocation* of RA should be attempted. Indeed, a significant benefit of an allocation process is that it removes the need for precise quantification of the value of the attribute. If there is no value, then there is no loss to bundled customers. If there is a value, then this value must be shared proportionally with unbundled customers. Instead of struggling with how to recognize and properly quantify the inherent value of existing long RA positions, the allocation put forward by the Co-Chairs would simply transfer a portion of those positions to LSEs that have a right to such allocation value.

C. The Existence of a CPE for Local RA Is Irrelevant and Should Have No Effect on the Adoption of a System and Flexible RA VAMO

The Phase 2 Decision concludes that the RA elements of the WG3 Report are “not properly tailored” to minimize the risks of unintended consequences, particularly “when layered with the new [Central Procurement Entity (CPE)] and RA compliance requirements.”⁷⁴ The Commission seems focused on the fact that the WG3 Proposal “does not consider the potential

⁷³ Phase 2 Decision at 42.

⁷⁴ *Id.* at 43.

impact of a CPE on Local RA procurement. Neither does the WG3 Proposal recommend how to make its RA proposal compatible with the new CPE.”⁷⁵

The response to the Commission’s concern is simple: the new CPE for local RA procurement in PG&E and SCE service territories approved in D.20-06-002 does not apply to either system or flexible RA. Thus, whether or not the new CPE addresses, as the Commission would have it, “many of the concerns the WG3 co-chairs raised about RA procurement,”⁷⁶ the CPE simply does not address any concerns regarding system or flexible RA at all.

Whether or not the WG3 Report properly “considered” the impact of the yet-to-be-adopted CPE is completely irrelevant. The CPE, in fact, is irrelevant to the continuing issues posed by the distribution of system and flexible RA among LSEs, and the market power and cost and compliance implications the WG3 Report addresses. The Commission errs in claiming the existence of the CPE provides grounds for denial of the proposals in the WG3 Report as they relate to system and flexible RA.

D. The Decision’s Vague and Sweeping Conclusions Regarding the Market, Rate, Planning, and Compliance Impacts of the RA VAMO Are Unsupported by Substantial Evidence as Required by Section 1757(a)(4)

Grounds for review of a Commission decision include whether “the findings in the decision of the commission are not supported by substantial evidence in light of the whole record.”⁷⁷ Notwithstanding the Phase 2 Decision’s emphasis on verifiable “evidence” elsewhere, the Commission makes broad, conclusory statements regarding the market, rate, planning, and compliance impacts of the RA VAMO. The Phase 2 Decision thus fails this standard.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ Cal. Pub. Util. Code § 1757(a)(4).

In rejecting the WG3 Proposal for the RA VAMO, the Commission notes it has considered “whether the proposal is tailored to minimize the risk of unintended consequences.”⁷⁸ The Commission then notes PG&E’s unsupported claims that implementing VAMO would leave PG&E with insufficient resources to meet bundled customer needs and would increase electric portfolio costs for all customers.⁷⁹ The Commission also cites AReM/DACC’s, again unsupported, claims that it “could also require LSEs to accept Local RA that they do not need, resulting in inefficiencies and over-procurement.”⁸⁰ The Commission also notes with approval PG&E’s audacious claims, not coupled with any evidence, that the WG3 Proposal would create a “significant and unprecedented market, regulatory, and planning transformation” that would open 80 percent of its portfolio for allocation, increase costs for bundled and departing customers alike, require PG&E to procure additional resources for RPS and RA compliance, and increase IOU system and administrative costs.⁸¹

Significantly, *none* of these claims are supported by any of the “evidence” the Commission has required elsewhere. Nonetheless, the Commission places full reliance on these statements as justification for denying the proposals in the WG3 Report. It is striking to contrast the Commission’s acceptance of these statements with its treatment of the WG3 proposals themselves. The Commission rejects CalCCA’s position on the inherent “hedge” value of the right of first refusal because “[a]s in D.18-10-019, we are left to base our decision on what we are able to observe and verify. . . . We do not have sufficient evidence of an observable and verifiable ‘right of first refusal’ benefit retained by bundled customers that would justify

⁷⁸ Phase 2 Decision at 43.

⁷⁹ *Id.* at 43-44.

⁸⁰ *Id.* at 44.

⁸¹ *Id.* at 13, citing PG&E’s WG3 Proposal Opening Comments without reference to any particular page.

modifying PCIA calculations or requiring allocations of [RA] resources.”⁸² Apparently, however, rejecting actions to redress known imbalances, as was directed by the Phase 1 Decision, can be done without evidence at all.

V. THE COMMISSION ABUSES ITS DISCRETION AND VIOLATES THE DUE PROCESS RIGHTS OF STAKEHOLDERS BY IGNORING DIRECTIVES IN D.18-10-019 AND REJECTING KEY ELEMENTS OF WG3’S PROPOSAL, ALLOWING THE PROCESS TO BE SUBVERTED

The Commission deferred central issues in this rulemaking from Phase 1 to Phase 2 in D.18-10-019, including “Portfolio Optimization and Cost Reduction” and “Allocation and Auction,”⁸³ and then specifically directed the use of a collaborative working group process, rather than a formal hearing process for those issues. Despite an intensive collaborative process and the submission of a strong proposal by the Co-Chairs, the Commission rejected several key elements of the WG3 Report. Instead, and contrary to the both the letter and spirit of the Phase 1 Decision, the Phase 2 Decision ignores the foundational “evidence” comprising the WG3 Report and allowed the working group process to be subverted. The Commission’s treatment of the WG3 Report is an abuse of discretion contrary to Section 1757(a)(5) and violates the due process rights of all stakeholders in this proceeding in contravention of Section 1757(a)(6).

A. The Commission Directed Work on Portfolio Optimization, Allocation and Auction Through a Collaborative Working Group Process

1. The Co-Chairs Conducted a Thorough and Robust Working Group Process as Directed By the Commission

In framing the R.17-06-026 working group process, the Commission described prior working group processes where “it was left to the directly interested stakeholders to work

⁸² *Id.* at 42.

⁸³ Phase 1 Decision at 116, Ordering Paragraph 14 at 164.

together to develop and recommend functional solutions to the challenges before them....”⁸⁴ The Commission further stated:

We anticipate that organizational workshops will facilitate refinement of the working groups scope, and that all participants shall assist with the preparation of a workplan for each working group, including a specific list of deliverables, and the schedule for completing the working group’s self-assigned tasks by the end of October, 2019.⁸⁵

The Commission then refined this proposal in its Scoping Ruling on February 1, 2019, placing “Portfolio Optimization and Cost Reduction” and “Allocation and Auction” in Working Group 3, and designating the Co-Chairs to lead the working group.⁸⁶ The Commission directed the parties to “work collaboratively” and “to report any difficulties immediately to the assigned ALJs.”⁸⁷ The Commission left open the possibility for hearings within 10 working days after filing the Working Group Report.⁸⁸ Notwithstanding, the Commission emphasized that “the best opportunity for parties to materially influence the outcome of this working group process is to provide a consensus proposal in their final reports to the Commission.”⁸⁹

To comply with these directives the Co-Chairs created a process for analyzing and reviewing the statewide issues of portfolio optimization and allocation and action of PCIA-eligible resources in the IOUs’ portfolios. As a result, the Co-Chairs’ proposals for various resources in the IOUs’ portfolios represented a consensus among them, based on a range of input from all interested parties in an intensive working group process. This intensive process included:

⁸⁴ *Id.* at 116.

⁸⁵ *Id.* at 117.

⁸⁶ Phase 2 Scoping Ruling at 9-10.

⁸⁷ *Id.* at 12.

⁸⁸ *Id.* at 8.

⁸⁹ *Id.* at 14.

- ✓ Thousands of hours contributed by stakeholders and co-chairs.
- ✓ Co-led regular meetings (more than 60 meetings).
- ✓ Stakeholder Workshops (in person/phone) in 2019 on April 29, July 25, October 17, and December 11, with three in San Francisco and one in Southern California.
- ✓ Stakeholder Comments after each workshop, which were appended to the Final Report.
- ✓ Two Progress Reports in 2019, including comments thereon.
- ✓ One Final Report filed on February 21, 2020, with formal docketed comments.

SCE also maintained a Sharepoint site with a repository of materials (workshop materials, Co-Chairs work plan, meeting agendas, etc.) for parties to access.

The WG3 Report thus represents more than a year’s worth of concentrated effort by the Co-Chairs and the stakeholders who participated actively throughout the development of the WG3 process.

The Commission, however, chose to change the rules after the game had been played. Ignoring the significant evidence and discussion surrounding these complex issues, and the resultant conclusions of the working group, the Commission abused its discretion by claiming the WG3 Report’s proposals are “not supported by evidence.”

Concomitantly, the Commission allowed certain parties to play a different game. Instead of participating collaboratively in the WG3 process, as the Scoping Ruling instructed, PG&E made proposals *well after* a solution was proposed by the Co-Chairs.⁹⁰ Nonetheless, the Commission appears to have given strong deference to PG&E’s proposals, although these proposals disregard the significant compromises the Co-Chairs made in proposing a solution. In addition, as noted above the Commission also accepted without question or benefit of discussion

⁹⁰ PG&E’s WG3 Proposal Opening Comments at 16, proposing “an alternative proposal [the “Attribute Distribution Framework”] for the Commission’s consideration”); *Reply Comments of Pacific Gas and Electric Company (U 39 E) on the Power Charge Indifference Adjustment Phase 2, Working Group #3 Final Report*, Mar. 27, 2020.

the statements put forward by PG&E. The Commission thereby dispossesses the vast majority of stakeholders in this proceeding, including those represented by the Co-Chairs and those parties who actively participated and collaboratively developed the WG3 Report, of their due process rights.

B. The WG3 Report is a Negotiated, Consensus and Unified Proposal, Intended to Balance Parties' Interests

Arrived at by representatives of major stakeholder groups after more than a year of deliberation, the WG3 Report and the proposals therein were intended to serve as a unified, integrated response to the myriad issues involved in the task the Commission ostensibly delegated to WG3. In fulfillment of the tasks assigned to them by the Commission, each of the Co-Chairs agreed to compromise positions on several important items in order to present a cohesive proposal to the Commission. Having reached and presented a collaborative compromise, the Co-Chairs presented collective and unified arguments to support their proposals, rather than devolving to individual litigation positions.

The Phase 2 Decision eviscerates this process. First, the Commission determines that each element of the proposal in the WG3 Report must be reviewed individually, and then it creates a new standard each proposal must meet. Finally, the Commission claims the proposals cannot be adopted because there is no litigation-style “evidence” to support each element, despite the abundant record created by WG3 itself.

1. The Commission's Assessment of Each Element of the WG3 Report Individually and the Application of a New Standard to Each Element For Review Contravenes the Phase 1 Decision

Instead of assessing the WG3 Report, which represents compromise positions agreed to after intense and thoughtful deliberation, as a unified whole, the Commission reviewed each element of the WG3 Report in isolation. Further, the Phase 2 Decision created a new standard,

determining that only resources determined to be “excess” under a newly applied definition could be subject to the efforts of WG3. As discussed in Section IV.A. above, the creation of this new standard contravened the express language and intent of the Phase 1 Decision.

2. The Commission Ignores the WG3 Report as “Evidence” of the Benefits of the Allocation and Market Offer Proposals

The Phase 2 Decision rejected two of the three key elements of the WG3 Report on grounds that it lacked evidence of the benefit of the RA and GHG-Free products. “Parties did not provide sufficient evidence in this proceeding to establish whether each IOU will have excess and/or uneconomic resources.”⁹¹ Further, the Commission stated it did not “have sufficient evidence of an observable and verifiable ‘right of first refusal’ benefit retained by bundled customers that would justify modifying PCIA calculations or requiring allocations of [RA] resources.”⁹² The Commission denied the WG3 proposal on GHG-Free resources and deferred further decision, and noted it “will consider as a next step in this phase of this proceeding whether GHG-Free resources are under-valued in the PCIA methodology, and whether to adopt a GHG-Free adder or an allocation mechanism.”⁹³

The Commission apparently expected litigation-style evidence to be produced to support what was a collaborative, negotiated, and collective approach. Of course, nothing in the record regarding the Phase 1 Decision, which plainly envisioned a consensus presentation, requires this type of “record.” However, the Commission also apparently rejected the abundant record produced by WG3 and somehow fails to consider this within its definition of “evidence.” But after significant discussion and analysis, the Co-Chairs recommended the WG3 proposals and put them forward on behalf of three critical industry segments. Their agreement alone that these

⁹¹ Phase 2 Decision at 41.

⁹² *Id.* at 42.

⁹³ *Id.* at 53.

were reasonable solutions constitutes more than sufficient “evidence” for the WG3 Report. The Commission abuses its discretion by rejecting the WG3 Proposal for RA and GHG-Free resources on the basis of an insufficient record.

In addition, the Commission’s rejection of the WG3 Report itself, together with all of its supporting material as “evidence” sufficient for its decision, blatantly holds the WG3 participants to a different evidentiary standard than the Commission applies to PG&E. As noted previously, the Commission accepted without question many of PG&E’s dramatic, and completely unverified, assertions regarding the potential impact of elements of the WG3 Report. Requiring the working group to produce more “evidence” is blatantly unfair to those parties who participated.

C. The Commission Unfairly Allowed PG&E to Circumvent the WG3 Process

The Commission further ignored the failure of key stakeholders to participate in the WG3 process as directed. The Commission effectively deferred to the concerns of PG&E in rejecting the RA VAMO and GHG-Free Allocation yet ignored their failure to present alternative proposals during the workshop process and the development of the WG3 proposals. Without participating in the workshop process and actively engaging the stakeholder representatives at that time, PG&E denied the stakeholders the ability to discuss, value, and even counter the positions put forward.

The whole point of the WG3 process was to encourage and facilitate an exchange of views so that a negotiated, consensus position could drive Commission decision-making. Instead, the Commission accepts without question the conclusions put forward by PG&E, who did not engage collaboratively in the WG3 process, well after the development, and delivery, of the WG3 Report. As a result, the Phase 2 Decision effectively promotes the subversion of the

WG3 process, to the detriment of stakeholders who relied on the process created by the Phase 1 Decision.

Stakeholders, of course, did not know in advance that the Commission would require additional reams of testimony and discovery from each party in support of positions the Co-Chairs, as representatives of those stakeholders, were directed to develop. Stakeholders were of course also unaware the Commission would base its Phase 2 Decision not on fully vetted and analyzed proposals, but on untested statements from parties who chose not to participate in WG3. Instead, stakeholders relied on the Commission's direction in the Phase 1 Decision and on the Co-Chairs to implement those directions and craft a consensus set of proposals to address a statewide problem. The Commission's decision to change the rules of the game after the fact violates the due process rights of each stakeholder who participated in WG3.

VI. RELIEF REQUESTED

For the reasons set forth above, the CCA Parties seek rehearing of the Decision to correct the legal errors identified in this Application.

Respectfully submitted,



Evelyn Kahl
General Counsel to the
California Community Choice Association

On Behalf of California Community Choice Association, Central Coast Community Energy, East Bay Community Energy, Peninsula Clean Energy, Silicon Valley Clean Energy Authority, and San José Clean Energy

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