BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S COMMENTS ON THE PROPOSED DECISION RESOLVING TRACK TWO ISSUES

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SUMMARY OF RECOMMENDATIONS[1]

The PD should be rejected and replaced with an Alternate Decision, as set forth in Appendix A, because:

- × The PD violates section 366.2(g) by failing to fulfill the Commission's ongoing statutory obligation to reduce the cost obligation of Later Departed Customers by the value of benefits "that remain" with bundled customers;
- × The PD violates section 1705's requirement that Commission decisions include findings on "all issues material to the order or decision," by failing to make any findings on how assigning the entire compliance value to current bundled customers while providing zero value to Later Departed Customers for the Pre-2019 Banked RECs satisfies the indifference mandates;
- × The PD's finding that CalCCA's position is untimely for failure to seek rehearing of D.11-12-018 and D.19-10-001 is legally erroneous because:
    - o Section 1731(b) allows rehearing only with "respect to matters determined in the action or proceeding"; and
    - o Neither Decision includes any discussion or resolution of whether Later Departed Customers would be entitled to value when current bundled customers use the RECs;
- × The PD commits legal error by finding that laches bars CalCCA's arguments given:
    - o There was no unreasonable delay as the issue has repeatedly been resolved only on an interim basis or for one proceeding only pending consideration in this proceeding, and CalCCA has consistently opposed a zero valuation; and
    - o The PD's conclusory determination of prejudice to the IOUs ignores that the IOUs were on notice of CalCCA's position and is unsupported by record evidence of reliance.

[1] Acronyms used herein are defined in the body of this document.

The California Community Choice Association[2] (CalCCA) submits these comments pursuant to Rule 14.3 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure[3] on the proposed *Decision Resolving Track Two Issues* (PD) in this proceeding, dated August 13, 2026.

I. INTRODUCTION

Track 2 of this Power Charge Indifference Adjustment (PCIA) proceeding is the culmination of six years of litigation over a single issue: whether unbundled customers, who paid for renewable energy credits (RECs) banked before 2019 (Pre-2019 Banked RECs) when they were bundled customers but who later departed (Later Departed Customers), are entitled under the Public Utilities Code[4] to receive their share of benefits when the RECs are later used by the investor-owned utilities (IOUs) to satisfy Renewables Portfolio Standard (RPS) compliance obligations for current bundled customers. The PD's answer – no – rests on multiple legal errors and must be rejected.

First, the PD violates section 366.2(g) by treating indifference as a one-time determination rather than an ongoing statutory obligation to account for benefits that remain with bundled customers. Section 366.2(g) expressly requires that costs imposed on unbundled, community choice aggregator (CCA) customers "*shall* be reduced by the value of any benefits *that remain* with bundled service customers."[5] Yet the PD states that "once the Commission adopts an indifference framework, we assume the framework will achieve indifference," and therefore the indifference achieved in Decision (D.) 11-12-018 "is all the indifference mandates required."[6] This result constitutes legal error in that it fails to comply with the Commission's ongoing statutory obligation to account for benefits *that remain* with bundled customers.

Pre-2019 Banked RECs present a unique timing issue because their costs and benefits can be realized by different customers at different times. When the RECs were generated, then-departed

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[2] California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Ava Community Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance of Southern California, CleanPowerSF, Desert Community Energy, Energy For Palmdale's Independent Choice, Lancaster Energy, Marin Clean Energy, Orange County Power Authority, 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, San José Clean Energy, Santa Barbara Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, Valley Clean Energy, and WestLight Energy.

[3] *State of California Public Utilities Commission, Rules of Practice and Procedure, California Code of Regulations Title 20, Division 1, Chapter 1* (May 2021), as amended by *Resolution ALJ-485 (*June 11, 2026).

[4] All Section references herein are to the California Public Utilities Code unless otherwise noted.

[5] Section 366.2(g) (emphasis added).

[6] PD, at 32.

customers were credited through the PCIA for the value of the RECs they paid to generate, and then-bundled customers paid for those RECs in their generation rates.[7] Indifference for then-departed customers was achieved—costs were allocated, and RECs changed hands. Some of those then-bundled customers, however, subsequently departed for CCA service and became Later Departed Customers. Although Later Departed Customers paid for the Pre-2019 Banked RECs while bundled, they never received benefits from their share of the banked RECs.

Those benefits arise when the share of the banked RECs that Later Departed Customers paid for through generation rates are used by the IOUs to satisfy current bundled customers' RPS obligations. The historical MPB credits to then-departed customers and subsequent compliance benefits for which the value must be provided to the customers that paid for them—i.e., current bundled customers and Later Departed Customers (which together were historically then-bundled customers)—are distinct benefits received by different customers at different times. Nothing in section 366.2(g) permits the Commission to disregard a benefit simply because it had not yet been realized—or could not yet be valued—when the associated costs were originally allocated. Nor does recognizing that benefit today retroactively modify D.11-12-018 or D.19-10-001. It prospectively applies section 366.2(g) to a benefit that *now remains* with current bundled customers. Unless the PCIA recognizes that value, Later Departed Customers will have paid for RECs whose present compliance value they never receive, while current bundled customers retain the entire compliance benefit *for free.* In other words, the PD would have Later Departed Customers paying for others to benefit from the costs they paid, while they receive nothing.

Second, the PD fails to make the findings required by section 1705 to support its conclusion that its resolution comports with section 366.2(g). The PD concludes that D.11-12-018 satisfied the "indifference mandates" when the renewable energy was generated and treats that historical determination as permanently resolving indifference with respect to those RECs. Without making all required findings, the PD's conclusion lacks the factual and legal foundations required by law.

Third**,** the PD concludes that CalCCA's argument is untimely, and CalCCA should have previously sought rehearing on this question. This conclusion treats the Commission's silence in D.11-12-018 and D.19-10-001 as an affirmative determination CalCCA was required to challenge on rehearing. Section 1731(b)(1), however, permits rehearing only "in respect to matters determined" in a

[7] Exhibit (Ex.) CCA-1 at 9:8-17.

Commission action or proceeding. Neither decision determined the issue presented in Track 2. CalCCA cannot be faulted for failing to seek rehearing of a determination the Commission never made.

Fourth, the PD's laches conclusion cannot be reconciled with the Commission's own treatment of this issue as unresolved. The Commission repeatedly and affirmatively – *12 times* – treated Pre-2019 Banked REC valuation as an open question and ultimately dedicated Track 2 for the express purpose of resolving it. CalCCA litigated that issue through the very process the Commission created. The Commission cannot now characterize CalCCA's argument as unfairly delayed because the Commission itself repeatedly treated the issue as unresolved.

Ultimately, the PD fails to provide Later Departing Customers the value of benefits for which they have paid. In fact, the PD's first Finding of Fact (FOF) reveals a bias the PCIA statutory framework precludes. This Finding describes the Legislature as "delegat[ing] to the Commission the task of creating a cost recovery and allocation framework *to ensure bundled customer indifference. . . .*"[8] Nowhere in any of the FOFs, Conclusions of Law (COL), or Ordering Paragraphs (OP) does the PD recognize that the Legislature, through sections 366.2, 366.3, and 365.2, *also* delegated to the Commission the task of preventing cost shifts between bundled and unbundled customers. Whether the omission of unbundled customers in FOF 1 is inadvertent or not, it captures the fundamental error that permeates the PD: indifference is not a one-way ratchet protecting bundled customers from cost shifts while permitting cost shifts to CCA customers. The Commission must fulfill the *entire* statutory mandate and protect *both* groups of customers from cost shifts.

Given the legal errors, the PD should be rejected and replaced with an Alternate PD that either values or allocates the Pre-2019 Banked RECs, as set forth in Appendix A.

II. SECTION 366.2(G) REQUIRES THE COMMISSION TO CREDIT TO LATER DEPARTED CUSTOMERS THE CURRENT BENEFITS OF PRE-2019 BANKED RECS RETAINED BY BUNDLED CUSTOMERS

The costs and benefits associated with Pre-2019 Banked RECs must be equitably allocated to prevent cost shifts as required by section 366.2(g). As set forth below, the PD: (1) fails to recognize section 366.2(g)'s ongoing requirement to ensure indifference between unbundled and bundled customers; (2) errs by characterizing the later compliance benefit as duplicative when the historical MPB credit and later compliance benefit account for different benefits to different customers, at different times; (3) fails to account for the benefits remaining with bundled customers by concluding

[8] PD, FOF 1 at 48 (emphasis added).

that D.11-12-018 permanently satisfied the indifference mandates for all future scenarios; (4) characterizes CalCCA's arguments as a request to modify D.11-12-018 and D.19-10-001, rather than the application of section 366.2(g) prospectively to a benefit being realized in the present; and (5) fails to recognize that a Pre-2019 Banked REC used to satisfy current bundled RPS compliance provides a benefit whose value must be accounted for under section 366.2(g).

A. Section 366.2(g) Requires the Commission to Ensure Ongoing Indifference

The PD violates section 366.2(g) by treating indifference as a one-time determination rather than an ongoing statutory obligation to account for benefits *that remain with* bundled customers. Typically, the allocation of PCIA costs and benefits between bundled and unbundled customers occurs within one ratemaking year.[9] That is, a resource generates in year X, producing energy/Resource Adequacy (RA)/RPS value in year X, and customers pay the year X cost; the ERRA Forecast/PCIA process allocates these year X costs and year X market values between bundled and unbundled customers.[10] Banking a REC, however, preserves the REC's compliance benefit for use in a later compliance year. The Commission has repeatedly recognized this temporal distinction. For example, D.19-10-001's treatment of post-2018 banked RECs assigns no PCIA market value to an unused banked REC when it is generated, but recognizes its market value when it is subsequently used for bundled RPS compliance. Thus, even though Pre-2019 Banked RECs are subject to a different valuation methodology, the Commission has recognized that the generation and later compliance use of a banked REC are temporally distinct valuation events.

As noted in the PD's FOF 1, "[t]he Legislature . . . did not specify [in the indifference statutes] how or over what time frame costs must be allocated or benefits remaining with bundled load must be reflected in PCIA rates."[11] Section 366.2(g) has no temporal requirement that costs and benefits have to occur simultaneously, and does not limit the benefits that must be recognized to those realized in the same year the underlying costs were incurred.[12] Instead, it broadly requires CCA customers' costs to be

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[9] Note that the determination in one ERRA forecast year is subject to true-up in the following ERRA forecast case.

[10] *See id.*

[11] PD, FOF 1, at 48.

[12] That omission is significant because other provisions of section 366.2 expressly prescribe the relevant timeframe when the Legislature intended to do so. For example, section 366.2(f)(2) requires CCA customers to reimburse the IOU for electricity contract costs attributable to the customer "for the period commencing with the customer's purchases of electricity from the [CCA], through the expiration of all then existing electricity purchase contracts entered into by the [IOU]." *See* Section 366.2(f)(2).

reduced by the value of "any benefits *that remain with* bundled service customers."[13] The Commission therefore cannot disregard a benefit merely because it is realized after the associated costs were incurred.

Despite this, the PD concludes that D.11-12-018 satisfied the indifference requirements for Pre-2019 Banked RECs *before the compliance benefits at issue here were ever realized.* This result contravenes section 366.2(g) and perpetuates the cost shift that the statute prohibits.

B. The PD Erroneously Characterizes Recognition of the Later-Realized Compliance Benefit as a Duplicative Payment

The PD wholly ignores the unique timing of Pre-2019 Banked RECs and the resulting impact on Later Departed Customers. Instead, it summarily concludes that "bundled customers . . . satisfied the indifference mandates, including section 366.2(g), when [they] credited departing load the market value of Pre-2019 Banked RECs in the years they were generated, in compliance with the indifference methodology adopted in D.11-12-018."[14] It therefore erroneously characterizes recognition of the later compliance benefit as requiring bundled customers to "credit the PCIA *again* when these RECs are used for bundled compliance[,]" and concludes that requiring bundled customers to pay an "*additional* cost to use the RECs now would violate the indifference statutes."[15]

These characterizations are wrong. There is *no duplicative payment* because the historical MPB credit and the later compliance benefit account for different benefits, to different customers, at different times. The historical MPB credit accounted for the market value of the RECs in the year they were generated and ensured that then-departed customers were paid the costs of those RECs under the methodology adopted in D.11-12-018. It did not compensate customers who were still bundled when the RECs were generated and banked — and therefore still paying their share of the costs—but who departed before those RECs were later used for bundled RPS compliance. Indeed, those Later Departed Customers could not have received the historical PCIA credit because *they were still bundled customers at the time.*

The distinction is critical. Compliance with D.11-12-018 in the generation year does not eliminate the separate requirement of section 366.2(g) to account for benefits that "remain with bundled service customers." Under the PD, the entire later-realized compliance benefit remains with the IOUs, providing the IOUs with a windfall in that they get to keep the Later Departed Customers' share of the RECs for their bundled customers *for free*. Section 366.2(g) does not permit that result. Providing Later

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13 Section 366.2(g) (emphasis added).

14 PD, COL 1, at 51.

15 PD, at 3, 11 (emphasis added), and COL 3-4, at 51-52.

Departed Customers their share of the benefit does not credit them "again"; it credits them for a benefit they paid for but never received.

C. The Commission Cannot Presume D.11-12-018 or D.19-10-011 Satisfied Section 366.2(g) Without Determining Whether Benefits Remaining with Bundled Customers are Accounted For

The PD attempts to satisfy section 366.2(g)'s requirements by relying on the Commission's adoption of D.11-12-018 and D.19-10-001. The PD notes that "[t]he Legislature delegated to the Commission the task of creating a cost recovery and allocation framework to ensure bundled customer indifference. . . ." and that "[o]nce the commission adopts an indifference framework, *we assume the framework will achieve indifference.*"[16] The PD then concludes that "*all* the indifference mandates required" was the payment in the years the renewable resources were generated because "[d]eparting load's PCIA rates contemporaneously decreased by the remaining benefits of those resources as determined by the commission – their market values – satisfying 366.2(g)."[17] The PD's analysis stops there.

But adoption of that cost allocation methodology is not itself evidence that the Commission has accounted for all benefits section 366.2(g) requires it to allocate. The PD's conclusion that the Commission need not prospectively adjust its methodology to address a benefit realized years later that was never accounted for contravenes section 366.2(g). When that occurs, the Commission must modify that methodology to comply with the statute. Indeed, the Commission has done exactly that before, including in D.18-10-019, when it modified the PCIA methodology to create a true-up,[18] and in the recent Track 1 Decision, when it modified the RA benchmark.[19] Decision 11-12-018 did not achieve indifference for Pre-2019 Banked RECs because the decision did not contemplate or address the issue. The statutory requirement controls the methodology – not the other way around.

In addition, the PD's reliance on D.19-10-001 and the Working Group Report leading up to it for the proposition that valuation of Pre-2019 Banked RECs was discussed and "undisput[ably] resolved" is legal error. The PD states that CalCCA acknowledged that Pre-2019 Banked RECs were already "fully

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16 PD, at 32, and FOF 1, at 48 (emphasis added).

17 PD, at 32 (citing JIOU-02 at 17); *see also* FOF 8, at 49, and COL 1, at 51.

18 D.18-10-019, COL 1, at 156 ("The Commission's current PCIA methodology leads to outcomes that are inconsistent with the requirements of Sections 365.2 and 366.3 . . . and should be revised as specified in this decision.").

19 D.25-06-049, COL 1, at 33 ("The Commission's current RA MPB calculation methodology leads to outcomes that are inconsistent with the requirements of Sections 365.2 and 366.3 and should be revised as described in this decision.").

allocated" through the D.11-12-018 cost allocation methodology in the Report from the Working Group Report (co-led by CalCCA and PG&E) that states that Pre-2019 Banked RECs "have already been bought and paid for by bundled customer[s] at previous years' RPS Adders." In addition, the PD notes that Pre-2019 Banked RECs were exempted from the Commission's post-2018 methodology adopted in D.19-10-001. Therefore, the PD surmises that "allocating an additional cost to bundled customers to use these RECs would violate indifference mandates."[20] However, neither the Working Group Report nor D.19-10-001 actually addressed precluding the non-zero valuation of benefits accruing for Later Departed Customers when the IOUs later use Pre-2019 Banked RECs for their bundled customer RPS compliance. They were both silent on the issue and cannot be used now to support the PD's claims that the indifference mandates had already been fully satisfied.

D. Accounting for the Compliance Value of Pre-2019 Banked RECs When that Benefit is Realized is a Prospective Application of Section 366.2(g)

The PD claims that what CalCCA is really arguing is "that the Commission erred in D.11-12-018 and that the pre-2019 PCIA methodology *should have* entitled Later Departed Customers to some future value for the Pre-2019 Banked RECs under the indifference mandates. It did not."[21] This argument puts words in CalCCA's mouth. CalCCA does not contend that D.11-12-018 was erroneous when issued. The decision simply did not contemplate Later Departed Customers, which makes sense. Future departed load was uncertain. Direct access was capped, and the one CCA that existed in 2011, Marin Clean Energy, had just narrowly survived PG&E's statewide ballot proposition aiming to stop the CCA movement. Another CCA did not form until three years later. CalCCA did not even exist at that time. The PD itself recognizes "the Commission did not recognize Later Departing Load in D.11-12-018."[22]

The PD further states that "the alleged cost shift CalCCA seeks to rectify pursuant to section 366.2(g) *existed under the pre-2019 framework*."[23] But there was no cost shift that occurred under the pre-2019 methodology vis-à-vis these RECs. The relevant benefit had not yet been realized. The compliance benefit arises *today* when an IOU uses a Pre-2019 Banked REC to satisfy its current bundled customers' RPS compliance obligation. CalCCA seeks recognition of *that* benefit when it is realized, as section 366.2(g) requires. The PD acknowledges both the "remaining benefits" of RPS resources and

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20 PD, at 37.
21 PD, at 35 (emphasis added), and FOF 14, at 50.
22 PD, at 35.
23 *Ibid.* (emphasis in original).

that "PCIA rates must be offset" by those benefits.[24] Yet it concludes that because D.11-12-018 did not establish a mechanism through which customers departing in later years would receive their share of those subsequently realized benefits, no such value may be recognized now.[25] That again reverses the statutory hierarchy. The absence of a historical methodology for allocating a benefit that would be realized in the future cannot override section 366.2(g)'s requirement to account for a benefit when it *remains with* bundled customers. As the PD itself recognizes, "[t]he Commission has the discretion to make modifications to the PCIA effective on a prospective basis."[26]

Nor does prospective recognition of the compliance benefits require the Commission to revisit the historical rates established under D.11-12-018. Those rates remain undisturbed. CalCCA does not seek to recalculate the market value assigned to Pre-2019 Banked RECs in their generation years, refund amounts collected under historical PCIA rates, or compensate customers for a historical cost shift. It seeks to account for a different benefit being realized *now*: the use of Pre-2019 Banked RECs to satisfy current bundled customers' RPS compliance obligations.[27] Applying section 366.2(g) to that current benefit is prospective, not retroactive.

E. The Commission Cannot Recognize that Pre-2019 Banked RECs Satisfy Current Bundled RPS Compliance While Assigning that Compliance Benefit Zero Value Under Section 366.2(g)

Finally, the Commission cannot reasonably recognize that Pre-2019 Banked RECs satisfy a current RPS compliance obligation while simultaneously treating the benefit of that compliance as having zero value for purposes of section 366.2(g). When an IOU removes a Pre-2019 REC from the bank and uses it for current bundled customer RPS compliance, that REC satisfies a compliance obligation that otherwise must be satisfied with other RPS procurement. The banked REC provides a present compliance value to bundled customers, even though the costs associated with acquiring that REC were originally paid pre-2019 by both current bundled customers and Later Departed Customers. The PD's zero-value result therefore cannot be reconciled with the statute, and should be rejected.

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[24] *Id.*

[25] PD, at 36, and FOF 5, at 49.

[26] PD, at 35; *see also* Section 1708 ("The Commission may at any time . . . rescind, alter, or amend an order or decision made by it.").

[27] Indeed, this answers the question raised by the PD in footnote 110 as to why CalCCA "does not contest the appropriateness of the use of prior market values to compensate departing load under the pre-2019 methodology…" A different benefit must now be realized.

III. THE COMMISSION FAILED TO MEET SECTION 1705 REQUIREMENTS TO MAKE FINDINGS AND CONCLUSIONS ON ALL ISSUES MATERIAL TO THE DECISION

The PD fails to make the findings required by section 1705 to support its conclusion that assigning the entire compliance value to current bundled customers while providing zero value to Later Departed Customers for Pre-2019 Banked RECs satisfies the statutory indifference requirements today. Section 1705 requires that Commission decisions "contain, separately stated findings of fact and conclusions of law . . . on *all issues material to the order or decision."*[28] The California Supreme Court has stated that "[e]very issue that must be resolved to reach [an] ultimate finding is 'material to the order or decision."[29] The Commission therefore must make the requisite findings upon which that ultimate conclusion rests.[30] Such findings "afford a rational basis for judicial review," allowing a reviewing court to do more than "only guess at how" a conclusion was reached.[31] An ultimate conclusion supported only by "bare-bones conclusory findings" is insufficient because the findings must disclose the factual and analytical basis for the Commission's determinations.[32]

The PD fails to make adequate findings directly addressing the indifference requirements. The Commission does not find that the ongoing indifference requirements of section 366.2(g) have been satisfied for Later Departed Customers and that those customers have received value for the benefits remaining with bundled customers. Neither does the Commission find that Later Departed Customers did not "experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load."[33] The only related FOF that speaks directly to the cost shift – rather than the alleged delay in bringing the claim – is as follows:

> FOF 4. . . . The Commission did not recognize "Later Departing Load" as a customer group in D.11-12-018 in any way.
>
> FOF 9. The alleged cost shift CalCCA is attempting to rectify pursuant to . . . section 366.2(g) existed under the pre-2019 framework.

The PD therefore states that the cost shift only occurred pre-2019, and it was implicitly addressed in 2011 and again in 2019, despite failing to recognize Later Departed Load as a customer group.

The PD's COL likewise are insufficient and, again, fail to address Later Departed Customers.

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28 Section 1705 (emphasis added).
29 *California Motor Transp. Co. v. Pub. Utils. Comm'n* (1963) 59 Cal.2d 270, 273.
30 *Id.* (citations omitted).
31 *Id.* at 274 (citations omitted).
32 *Toward Utility Rate Normalization v. Public Utils. Comm'n* (1978) 22 Cal.3d 529, 540; *California Motor,* 59 Cal.2d at 273; *Greyhound Lines, Inc. v. Pub. Utils. Comm'n* (1967) 65 Cal.2d 811, 813.
33 Sections 366.3, 365.2.

COL 1. Bundled customers of SDG&E, SCE, and PG&E satisfied the indifference mandates, including section 366.2(g), when bundled customers credited departing load the market value of Pre-2019 Banked RECs in the years they were generated, in compliance with the indifference methodology adopted in D.11-12-018.

COL 4. Because the indifference mandates were satisfied under the pre-2019 methodology, to require current bundled customers to pay an additional cost to use the resources for which costs have already been allocated under the pre-2019 methodology would violate the indifference mandates.

The PD's characterizations result in a sidestepping of the inquiry necessary to answer the "issues material to the . . . decision": whether unbundled customers, who paid for Pre-2019 Banked RECs when they were bundled but who later departed, are statutorily entitled to receive their share of benefits when the RECs are later used to satisfy the RPS compliance obligations of current bundled customers. The PD therefore fails to satisfy the requirements of section 1705 and should be rejected.

IV. THE PD'S UNTIMELINESS FINDING IS INCONSISTENT WITH SECTION 1731(B)(1) BECAUSE CALCCA COULD NOT HAVE CHALLENGED A MATTER THE COMMISSION NEVER DETERMINED

The PD recasts CalCCA's position from seeking indifference *today* under section 366.2(g) into an attempt to reverse the alleged indifference treatment of Pre-2019 Banked RECs in D.11-12-018 and D.19-10-001.[34] In doing so, the PD concludes not only that those decisions already satisfied the indifference mandates, but also that CalCCA's position is untimely because CalCCA failed to seek rehearing of those decisions pursuant to section 1731(b)(1).[35] The PD's conclusion fails because neither D.11-12-018 nor D.19-10-001 *actually determined* the indifference treatment applicable when Pre-2019 Banked RECs are later used for bundled customer RPS compliance. The Commission was silent on that issue, and CalCCA and its CCA members could not have sought rehearing of determinations the Commission never made.

The PD attempts to transform that silence into an affirmative determination. It states that, "at the time [the Commission] adopted the decision that required bundled customers to pay for RECs in the year they were generated and that omitted credits for customers who were not yet departing load," the Commission knew those RECs could be banked and was aware of the statutory requirement to prevent cost shifts.[36] The PD then reasons that "[y]et the Commission's 2011 decision did not adopt a framework that required the RECs to be valued again in the year the RECs are used to satisfy bundled

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[34] *See* PD, at 38, and FOF 14, at 50.
[35] *See* PD, at 37-39, FOF 15-16, at 50, COL 6, at 52.
[36] PD, at 41-42.

customer compliance obligations to impact additional value to Later Depart[ed] Load."[37] Therefore, from what D.11-12-018 *did not adopt,* the PD concludes that CalCCA is now seeking redress for customers allegedly "*rendered not indifferent under prior methodologies . . . .*"[38]

That reasoning conflates the absence of a determination with an affirmative determination. The fact that D.11-12-018 did not adopt a mechanism for recognizing the future compliance value of Pre-2019 Banked RECs does not mean it affirmatively determined that such value must be zero. D.11-12-018 did not address what value, if any, should be recognized when these RECs are later used for bundled customer RPS compliance. Nor did D.19-10-001 or the Working Group Report leading up to it make or address that determination. The PD therefore supplies determinations never made and faults CalCCA and its members for failing to challenge them years ago.

Section 1731(b)(1) allows rehearing only with "respect to matters *determined* in the action or proceeding."[39] California Supreme Court and Commission precedent distinguish matters actually determined from issues an earlier decision simply did not address. Where a prior decision includes no meaningful discussion of an issue and resolution of that issue was not necessary to the decision, its silence cannot later be converted into an affirmative determination.[40] The Commission itself has rejected precisely that type of inference, concluding that a prior decision's silence on an issue "can not reasonably be construed to establish Commission policy."[41] Indeed, adoption of the PD's policy would create a dangerous precedent, requiring parties to seek rehearing every time the Commission could have addressed an issue, but didn't.

Neither D.11-12-018 nor D.19-10-001 determined that Later Departed Customers would receive zero value when Pre-2019 Banked RECs are subsequently used for bundled customer RPS compliance. Nor was such a determination necessary to either decision. The fact that D.11-12-018 addressed the value recognized in the year RECs were generated did not require the Commission to determine the treatment of a distinct compliance benefit realized years later. In addition, neither D.19-10-001 nor the

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37 PD, at 42 (emphasis added).

38 *Ibid.*

39 Section 1731(b)(1).

40 *See People v. Gray* (2023) 15 Cal.5th 152 (declining to read an earlier Supreme Court opinion as establishing a requirement where "the question was not before us"); *see also People v. Sims* (1982) 32 Cal.3d 468, 484 ("An issue is actually litigated '[w]hen [it] is *properly* raised, by the pleadings or otherwise, and is submitted for determination, and is *determined* . . . .").

41 D.07-12-021.

Working Group Report addressed how to maintain indifference for Later Departed Customers when those Pre-2019 Banked RECs are subsequently used.[42]

CalCCA and its members had no determination on this issue that they could challenge on rehearing. Its Track 2 position cannot be deemed untimely for failing to challenge a determination that did not exist. The PD also cannot supply that determination now and retroactively fault CalCCA for failing to challenge it years earlier. The PD's untimeliness conclusion, and the PD, should be rejected.

V. THE COMMISSION'S REPEATED TREATMENT OF PRE-2019 BANKED REC VALUATION AS AN UNRESOLVED ISSUE CONFIRMS THAT CALCCA'S CLAIM IS NOT BARRED BY LACHES

CalCCA and its member CCAs have diligently and consistently pursued the argument that all customers who paid to generate Pre-2019 Banked RECs used for bundled customer compliance must receive their share of the benefits of those RECs. The record in this proceeding and the multiple prior proceedings in which this issue was disputed demonstrate that these arguments are timely, ripe, and appropriate for decision on the policy merits in *this* proceeding.

Nevertheless, the PD erroneously adopts the Joint IOUs' argument that laches bars CalCCA from raising its claims in this proceeding because CalCCA and its members failed to file for rehearing of D.11-12-018 or D.19-10-001.[43] Laches is an equitable doctrine that prevents a party who has 'slept on their rights' from raising them too late in a way that is unfair to another party.[44] Laches, therefore, requires both "unreasonable delay" and a resulting "prejudice" (or acquiescence).[45] The reasonableness of an alleged delay is a fact-based question that turns on what a party "knew or with reasonable inquiry should have known."[46] Neither unreasonable delay nor prejudice occurred here, resulting in legal error through the PD's finding that laches bars CalCCA's arguments.

A. Unreasonable Delay Does Not Exist Because Neither D.11-12-018 Nor D.19-10-001 Resolved the Question of Pre-2019 Banked REC Value, and Only Recently Did the IOUs Start Predicting the Need to Use Pre-2019 Banked RECs

As a threshold matter, CalCCA's claim regarding Pre-2019 Banked RECs cannot be characterized as unreasonably delayed. CalCCA has challenged the Joint IOUs' proposals to value Pre-

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42 In fact, SCE filed an Application for Rehearing on the exact question of whether D.19-10-001 conclusively determined the value of Pre-2019 Banked RECs when used for RPS compliance, and the Commission punted, leaving the ambiguity to be resolved in a later rulemaking. *See* D.24-08-004, at COL 3-4.

43 PD, at 40.

44 D.15-05-004, at 22.

45 *See* 24 Cal.4th 61, at 68; *see also* D.15-02-040, at 7.

46 *See* D.95-02-016, at COL 4-5.

2019 Banked RECs at zero in all Commission proceedings in which the question has been at issue, and the issue has never been resolved. For laches to apply, CalCCA must have been on notice that the Commission believed the issue had already been decided. The actions of CalCCA, other parties, and the Commission itself demonstrate it was reasonable to consider this issue unresolved, and that this rulemaking forum is the appropriate forum in which to address this question. None of the Commission's twelve prior decisions addressing this issue suggested that the issue had already been decided.

The Commission's statements in ERRA cases demonstrate the reasonableness of CalCCA's position that this question had not been previously addressed. The Commission regularly declines to decide issues that are not ripe,[47] and declines to decide open policy questions in the ERRA cases.[48] That occurred as recently as December for these RECs, when the Commission continued its pattern of deciding the Pre-2019 Banked REC question on "interim" or "for this case only" grounds.[49] In PG&E's 2026 ERRA Forecast Decision, for example, the Commission found "that PG&E's proposal [to value Pre-2019 Banked RECs at zero] is reasonable *on an interim basis* while awaiting a more comprehensive decision on use of banked RECs in a rulemaking."[50] That Decision explicitly found that D.19-10-001 "did not conclusively resolve how to value pre-2019 RECs," and adopted PG&E's proposal "on an interim basis for the purpose of this decision" because the question was complicated, the subject of "conflicting understandings" and "appropriate for consideration in a rulemaking."[51]

The PD also acknowledges but erroneously disregards that the Commission has already granted the identical relief CalCCA is asking for (i.e., valuation of Pre-2019 Banked RECs at the RPS MPB) three times (PG&E's 2023, 2024, and 2025 ERRA Forecast decisions).[52] This conclusion is inconsistent with any finding that CalCCA's claim is stale, abandoned, untimely, or unreasonably delayed. How could the Commission have found that CalCCA's proposal resulted in just and reasonable rates in these

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47 D.18-11-005, at 4 (citing D.18-05-050, at 3).

48 OIR, at 10 ("the [2026 Energy Resource Recovery Account (ERRA)] process itself is intended to function as an individual electric IOU's annual forecast and accounting review, not as a forum for evaluating or setting policy.")

49 D.25-12-028, at 111-113, COL 14 (treating resolution as "interim"); D.25-12-027, at FOF 15 ("on an interim basis for the purpose of this decision"); D.24-12-039, at 68 (approving treatment "for this proceeding"); D.24-08-004, at 5 (denying SCE's Petition for Modification and saying the Commission "may consider the issue in a future rulemaking"); D.23-11-094, at 60 (treating resolution as "interim").

50 D.25-12-027, at 26.

51 D.25-12-027, at 31.

52 PD at 42.

three decisions and then now decide that the matter had already been clearly resolved to *prevent* such treatment over a decade ago?

Additionally, the Joint IOUs only recently started considering the need to use Pre-2019 Banked RECs. And while the PD notes that "actual harm is not a condition precedent to challenging a Commission decision,"[53] it is clear that parties and the Commission were working together to delay the consideration of the issue to this rulemaking. The Commission even ordered the IOUs to exhaust Post-2018 Banked RECs before turning to Pre-2019 Banked RECs.[54] In every proceeding in which this issue was explicitly raised, CalCCA opposed valuing Pre-2019 banked RECs at a zero-dollar valuation. Now the issue has finally come to a head. Indeed, the Scoping Memo launching this Track 2 characterized the Pre-2019 Banked REC valuation question as one that had "emerged as exigent."[55] Characterizing CalCCA's position as unreasonably delayed therefore ignores the facts and should be rejected.

B. The PD's Determination of Prejudice Ignores that the Joint IOUs Were on Notice of CalCCA's Arguments and is Unsupported by Record Evidence of Reliance

The PD also erroneously adopts the Joint IOUs' laches argument by finding prejudice to the IOUs by CalCCA failing to earlier raise its claims. This finding, however, ignores the history of this dispute and prior positions, and relies on unsupported factual claims. First, the Joint IOUs have been aware that CalCCA and its members have considered this a disputed issue for years and have consistently raised their arguments in applications and rulemakings. The PD claims that CalCCA's alleged delay "prejudiced other stakeholders" because those stakeholders lost their opportunity to "advocate for the redress of other past cost shifts" and because they "made procurement, allocation, and market offer decisions."[56] But the IOUs made their decisions while on notice that CalCCA considered this matter disputed for all the reasons described *supra*. The IOUs – like the CCAs – made procurement, allocation, and market offer decisions under conditions of uncertainty as this issue remained unresolved.

In fact, the Joint IOUs themselves claimed that the valuation of banked RECs was a live issue as recently as 2023. In R.17-06-026 (and after D.19-10-001) the parties responded to an ALJ request for them to identify what issues remained to be addressed. In SCE's Comments in response, it included:

> How the IOUs should account for the use of banked Renewable Energy Credits (RECs) for RPS compliance. Stakeholders have observed that there is no guidance on how the IOU should account

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53 PD at 41.
54 *See, e.g.*, D.23-11-094, COL 5-7, OP 9.
55 R.25-02-005, *Amended Scoping Memo* (Feb. 3, 2026), at 2.
56 PD, at 41.

> for its use of banked RECs for RPS compliance purposes. The underlying issue is to ensure that the value of the those banked RECs is appropriately accounted for in the IOUs' PABA, adopted in this proceeding in 2018, when and if they are used for the IOU's RPS compliance.[57]

At the time, CalCCA agreed, noting that the Commission should address questions related to "the value that will be placed on the RECs, and specific methodologies for tracking excess RECs and whether they have been previously charged to customers."[58] PG&E's Reply Comments also agreed with SCE, stating that SCE's Comments "correctly recognize that there is no guidance on banked REC accounting."[59] The Joint IOUs' claim of laches is therefore itself untimely, and they cannot demonstrate that they were prejudiced by any alleged delay. Laches is an equitable remedy, and a finding of laches is improper when the invoking party's hands are themselves not clean.[60]

Lastly, the application of laches in this instance runs counter to the practice CalCCA reasonably believed the Commission employs in rulemakings: permitting parties to raise legal and policy arguments as to how the Commission can accomplish its statutory and constitutional obligations prospectively. CalCCA was unable to find any historical instance in which the Commission used laches to reject a party's argument made through testimony and briefing in a rulemaking. The PD's reliance on latches to reject to CalCCA's claims must be rejected as legally erroneous.

VI. CONCLUSION

CalCCA appreciates the opportunity to submit these comments and respectfully requests adoption of the recommendations proposed herein. For all the foregoing reasons, the PD should be rejected and replaced with an Alternate PD that either values or allocates the Pre-2019 Banked RECs, as set forth in Appendix A.

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[57] *Opening Comments of SCE on ALJ's Ruling Requesting Comments on Supplemental Greenhouse Gas-Free Proposal and Issues in Scope*, R.17-06-026 (Nov. 7, 2022), at 4.

[58] *CalCCA's Comments on ALJ's Ruling Requesting Comments on Supplemental Greenhouse Gas-Free Proposal and Issues in Scope*, R.17-06-026 (Nov. 7, 2022), at 15.

[59] *Reply Comments of PG&E to Administrative Law Judge's Ruling Requesting Comments On GHG-Free Resources Supplemental Energy Division Staff Proposal and Issues in Scope*, R.17-06-026 (Nov. 7, 2022), at 5.

[60] D.15-02-040, at 7 ("Laches is an equitable doctrine, and the party invoking laches must "come with clean hands." (13 Witkin, Summary of Cal. Law (10th ed. 2005) Equity, § 9; *see Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co.* (1945) 324 U.S. 806, 814 (unclean hands "closes the doors of a court of equity to the one tainted with inequitableness or bad faith relative to the matter in which he seeks relief")).

Respectfully submitted,

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APPENDIX A
TO
CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S COMMENTS ON THE PROPOSED DECISION RESOLVING TRACK TWO ISSUES

PROPOSED CHANGES TO FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS

All Findings of Fact, Conclusions of Law, and Ordering Paragraphs in the Proposed Decision shall be rejected and replaced with the following:

FINDINGS OF FACT

1. The Legislature delegated to the Commission the task of creating a cost recovery and allocation framework to prevent cost shifts between bundled and unbundled customers and did not specify how or over what time frame costs must be allocated or benefits remaining with bundled load must be reflected in PCIA rates.
2. RECs generated by the investor-owned utilities prior to 2019 and subsequently banked present a unique timing issue because their costs and benefits can be realized by different customers at different times.
3. In D.11-12-018, the Commission revised the PCIA market price benchmark to incorporate an adder to reflect the market value of RPS-compliant renewable resources in the PCIA.
4. Before 2019, when RECs were generated by PCIA resources, customers that had already departed bundled service were credited through the PCIA for the value of the RECs they paid to generate.
5. Before 2019, then-bundled customers paid for all of the RECs generated by the IOUs' PCIA resources in their generation rates, as required by D.11-12-018. If the investor-owned utility did not need the RECs at that time to satisfy the RPS compliance needs of their bundled customers, the investor-owned utility could bank the RECs for later use.
6. After paying for the RECs in generation rates, some then-bundled customers subsequently departed for CCA service and became Later Departed Customers.
7. IOU bundled customers receive benefits from Pre-2019 Banked RECs when the IOUs use those RECs to satisfy a portion of these bundled customers' RPS compliance obligations.
8. These benefits arise from both the share of Pre-2019 banked RECs that current bundled customers paid for through generation rates and from the share of the Pre-2019 banked RECs that Later

Departed Customers paid for through their own generation rates when they were bundled customers.

9. Although Later Departed Customers paid for the Pre-2019 Banked RECs while bundled, they never received benefits from their share of the banked RECs.

10. The historical MPB credit to then-departed customers and the subsequent compliance benefit retained by current bundled customers are not duplicative; they are distinct benefits received by different customers at different times.

11. Recognizing the benefits to current bundled customers when the IOUs remove Pre-2019 Banked RECs from the bank and use them for RPS compliance, and providing to Later Departed Customers the value of the share of those benefits for which they paid, satisfies the requirement of Section 366.2(g) that benefits that remain with current bundled customers be credited or allocated to Later Departed Customers.

12. Unless the PCIA recognizes that value, Later Departed Customers will have paid for RECs whose present compliance value they never receive, while current bundled customers retain the entire compliance benefit for free, resulting in a cost shift to Later Departed Customers.

13. Crediting the value of—or allocating—Pre-2019 banked RECs to the customer vintage of the year in which a REC was banked provides benefits to all customers who paid for those RECs in proportion to their load (including current bundled customers), and does not provide any new PCIA credit to customers who departed before those RECs were banked.

CONCLUSIONS OF LAW

1. Section 366.2(a)(4) requires that the implementation of a community choice aggregation program shall not result in a shifting of costs between the customers of the community choice aggregator and the bundled service customers of an electrical corporation.

2. Section 366.2(f) requires customers purchasing electricity from a community choice aggregator to reimburse the electrical corporation that previously served the customers for net unavoidable electricity costs attributable to that customer.

3. Section 366.2(g) requires that estimated net unavoidable costs paid by the customers of the community choice aggregator shall be reduced by the value of any benefits that remain with bundled service customers, unless the customers of the community choice aggregator are allocated a fair and equitable share of those benefits.

4. The Commission has a statutory obligation to ensure ongoing indifference between bundled and unbundled customers.

5. D.11-12-018 adopted a PCIA methodology governing the allocation of costs and benefits of RECs between then-bundled customers and already departed customers at the time of generation of the REC.

6. To prevent a cost shift to Later Departed Customers in violation of Sections 366.2(a)(4) and (g), the Commission must ensure customers that departed bundled service after a REC was generated prior to 2019 receive value, when that REC is removed from the bank by the investor-owned utility to be used for RPS compliance on behalf of its current bundled customers.

7. Requiring current bundled customers to compensate Later Departed Customers for the use of Pre-2019 Banked RECs that were originally paid for by Later Departed Customers does not constitute an unlawful shifting of costs to current bundled customers.

7. The Commission should value Pre-2019 Banked RECs at the current Renewables Portfolio Standard Market Price Benchmark for the purpose of calculating Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company's annual Power Charge Indifference Adjustment indifference amounts.

ORDERING PARAGRAPHS

1. Renewable Energy Credits generated prior to January 1, 2019, and banked shall be valued at the current Renewables Portfolio Standard Market Price Benchmark for the purpose of calculating Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company's annual Power Charge Indifference Adjustment indifference amounts.

[Alternatives to 1.:

1. Renewable Energy Credits generated prior to January 1, 2019, and banked shall be allocated proportionate to the payment made by Later Departed Customers for those Renewable Energy Credits when they were bundled customers, via a decrement to the applicable load-serving entities' Renewables Portfolio Standard procurement need.]

2. The methodology adopted in this decision shall be effective immediately and shall be incorporated into each investor-owned utility's 2027 Energy Resource Recovery Account October updates, impacting 2026 true-ups and 2027 forecasted rates.

3. Rulemaking 25-02-005 remains open.

This order is effective today.