BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Update and Reform Energy Resource Recovery Account and Power Charge Indifference Adjustment Policies and Processes.	R.25-02-005

CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S APPLICATION FOR REHEARING OF DECISION 26-09-047

PUBLIC VERSION

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SPECIFICATION OF ERROR[1]

Rehearing should be granted to correct the following errors in D.26-09-047. The Commission:

- × **Misinterprets section 366.2(g)** by finding indifference satisfied for Later Departing Customers on a historical credit provided to a different set of customers – Previously-Departed Customers;

- × **Misapplies section 1731** by finding CalCCA's valuation claim untimely even though the Commission had not previously determined whether customers must receive credit in the PCIA for the subsequent compliance value of Pre-2019 Banked RECs when those RECs are ultimately used;

- × **Fails to satisfy section 1705's findings requirement and lacks evidentiary support** for its conclusion that assigning the entire compliance value of Pre-2019 Banked RECs to Current-Bundled Customers, while providing zero value to Later Departing Customers, satisfies the statutory indifference requirements today;

- × **Fails to address CalCCA's proposed cost-neutral allocation alternative,** which would satisfy the Commission's concern of purported unreasonable cost increases to bundled customers;

- × **Fails to support its laches ruling** with evidence of unreasonable delay or detrimental reliance, despite the Commission's ongoing treatment of the valuation issue as unresolved;

- × **Unreasonably discriminates between customers in violation of section 453** by granting Current-Bundled Customers the entire compliance value of Pre-2019 Banked RECs while denying Later Departing Customers any share of that value solely because they have departed bundled service; and

- × **Unlawfully characterizes relief for Later Departing Customers as "arbitrary"** based on alleged, unproven cost shifts that, if they occurred, would have affected all Then-Bundled Customers, including Later Departing Customers.

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

BEFORE THE PUBLIC UTILITIES COMMISSION
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CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S APPLICATION FOR REHEARING OF DECISION 26-09-047

Pursuant to Public Utilities Code sections 1731(b)(1)[2] and 1732, and Rule 16.1 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure,[3] California Community Choice Association[4] (CalCCA) submits this Application for Rehearing (AFR) of Decision (D.) 26-09-047 (D.26-09-047 or the Decision), issued September 22, 2026.[5] Rule 16.1(a) requires that an application for rehearing be filed within 30 days of the date the Commission mails the decision. This Application is timely filed.

[2] All subsequent code sections cited herein are references to the California Public Utilities Code unless otherwise specified.

[3] *State of California Public Utilities Commission, Rules of Practice and Procedure, California Code of Regulations Title 20, Division 1, Chapter 1* (May 2021): https://webproda.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/rules-of-practice-and-procedure-may-2021.pdf; and *Resolution ALJ-485 (*June 11, 2026): https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M609/K277/609277261.PDF.

[4] 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.

[5] D.26-09-047, *Decision Resolving Track Two Issues*, Rulemaking (R.) 25-02-005 (Sept. 22, 2026): https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M620/K372/620372336.PDF.

I. INTRODUCTION

The Decision assigns zero value in the Power Charge Indifference Adjustment (PCIA) to renewable energy credits (RECs) generated and banked by the investor-owned utilities (IOU) before January 1, 2019 (Pre-2019 Banked RECs), when those RECs are used to satisfy Renewables Portfolio Standard (RPS) requirements for bundled customers. As a result, community choice aggregator (CCA) customers who paid for a share of those RECs while bundled, but who Later Departing bundled service, receive no benefit for the compliance value realized when the IOUs withdraw the RECs from the bank.

As CalCCA explained at the August 31, 2026, Oral Argument in this proceeding, this result violates the statutory indifference mandates.[6] Section 366.2(g) requires the Commission to compensate CCA customers for "benefits that remain with bundled service customers," unless the CCA customers "are allocated a fair and equitable share of the benefits." Later Departing Customers will have paid for RECs they will never get to use or receive credit for, while Current-Bundled Customers will receive the entire compliance benefit—including the share paid for by customers who subsequently departed. The Decision thus confers a windfall on Current-Bundled Customers at Later Departing Customers' expense.

This AFR identifies multiple legal errors, each independently requiring rehearing and correction of the Decision's central holding: the denial to CCA customers of credit through the PCIA for the compliance value of Pre-2019 Banked RECs they funded. The Decision rests on an erroneous interpretation of the indifference requirements, unsupported findings and legal conclusions, and procedural grounds that conflict with the Commission's longstanding treatment

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[6] *See August 31, 2026 Oral Argument Reporters' Transcript,* R.25-02-005, Vol. 2 (Pages 215-275) (Sept. 3, 2026) (OA Tr.), at 218:13-14: https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M617/K522/617522978.PDF.

of the Pre-2019 Banked REC valuation issue as unresolved. It also fails to address an alternative allocation proposal that could preserve indifference without increasing bundled customers' costs.

Rehearing should be granted to correct the following errors. The Commission:

- × **Misinterprets section 366.2(g)** by finding indifference satisfied for Later Departing Customers on a historical credit provided to a different set of customers – Previously-Departed Customers;
- × **Misapplies section 1731** by finding CalCCA's valuation claim untimely even though the Commission had not previously determined whether customers must receive credit in the PCIA for the subsequent compliance value of Pre-2019 Banked RECs when those RECs are ultimately used;
- × **Fails to satisfy section 1705's findings requirement and lacks evidentiary support** for its conclusion that assigning the entire compliance value of Pre-2019 Banked RECs to Current-Bundled Customers, while providing zero value to Later Departing Customers, satisfies the statutory indifference requirements today;
- × **Fails to address CalCCA's proposed cost-neutral allocation alternative,** which could satisfy the Commission's concern of purported unreasonable cost increases to bundled customers;
- × **Fails to support its laches ruling** with evidence of unreasonable delay or detrimental reliance, despite the Commission's ongoing treatment of the valuation issue as unresolved;
- × **Unreasonably discriminates between customers in violation of section 453** by granting Current-Bundled Customers the entire compliance value of Pre-2019 Banked RECs while denying Later Departing Customers any share of that value solely because they have departed bundled service; and
- × **Unlawfully characterizes relief for Later Departing Customers as "arbitrary"** based on alleged, unproven cost shifts that, if they occurred, would have affected all Then-Bundled Customers, including Later Departing Customers.

The Commission should grant rehearing and adopt a method that accounts for the compliance value of Pre-2019 Banked RECs when the IOUs use them for bundled customers' RPS compliance. This AFR identifies each challenged ruling, the governing law, the supporting record, and the resulting prejudice. CalCCA seeks application of the statutory indifference

requirements to a compliance benefit the IOUs and their bundled customers realize today, without reopening rates previously made final.

II. BACKGROUND AND PROCEDURAL HISTORY

A. Retail Electricity Choice and the Statutory Indifference Framework

Through the passage of Assembly Bill (AB) 117 in 2002, the California Legislature authorized Community Choice Aggregation, broadening opportunities for retail electric competition previously allowed only through Direct Access (DA) service via Electric Service Providers (ESPs).[7] Instead of receiving all services (i.e., generation, transmission, distribution, and other services) from their IOU (as a bundled customer), CCA customers receive generation service from their local CCA, and continue receiving transmission, distribution, and all other services from the IOU (unbundled or departed load customer).[8] Today, 25 CCAs are in operation in California serving more than 15 million customers.[9]

California law requires that the Commission ensure customer indifference as a result of retail choice. This statutory indifference has three related requirements:

- Bundled customers should not experience cost increases due to the implementation of a CCA program or a customer choosing to receive service from other providers;[10]
- Departed load should not experience cost increases due to an allocation of costs not incurred on behalf of the departed load;[11] and
- Net unavoidable electricity costs paid by CCA customers must be reduced "by the value of any benefits that remain with bundled service customers, unless the [CCA] customers . . . are allocated a fair and equitable share of those benefits."[12]

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7 AB 117 (Stats. 2002, ch. 838).

8 Brian Dickman, *Track 2 Direct Testimony of Brian Dickman on Behalf of the California Community Choice Association* (Mar. 2, 2026) (Ex. CCA-01), at 4:20-23: https://docs.cpuc.ca.gov/PublishedDocs/SupDoc/R2502005/8997/601158208.pdf. DA/ESP customers are also unbundled or departed load customers.

9 *Id.* at 4:23-24.

10 Sections 365.2, 366.2(a)(4), and 366.3.

11 *Ibid*.

12 Section 366.2(g).

B. Commission-Established Indifference Methodology: The Power Charge Indifference Adjustment

The PCIA is the tool the Commission adopted "to equalize cost sharing" and ensure indifference between these two groups of customers.[13] When customers of IOUs depart from bundled service and receive their electricity from a non-IOU provider, such as a CCA, the PCIA mechanism results in "those customers remain[ing] responsible for costs previously incurred on their behalf by the IOUs — but only those costs."[14] Consistent with the indifference statutes, the PCIA also conveys to departed load customers the value of resource attributes retained by the IOU for bundled customers.[15]

PCIA rates are established to recover the IOU's above-market costs related to PCIA-eligible resources (Indifference Amount).[16] The Indifference Amount is the difference between the cost and value of the IOU's supply portfolio.[17] The PCIA therefore tracks both: (a) the costs of resources; and (b) the value of the benefits provided by the IOUs' PCIA-eligible portfolios and retained by the IOU for bundled customers.[18] Since D.11-12-018, the value of the IOUs' supply portfolios has been derived from administratively determined proxy values that are intended to estimate the value the resource portfolio attributes could provide: Energy Value, RPS

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13 *See* D.18-10-019 at 3; Ex. CCA-01 at 6:3-5.

14 *Scoping Memo and Ruling of Assigned Commissioner,* R.17-06-026 (Sept. 25, 2017), at 2; *see also* D.18-10-019, *Decision Modifying the Power Charge Indifference Adjustment Methodology,* R.17-06-026 (Oct. 11, 2018), at 3; Ex. CCA-01 at 6:5-8.

15 Ex. CCA-01 at 6:8-9.

16 *Id.* at 6:10-11.

17 *Id.* at 6:11-13.

18 *Id.* at 6:16-18.

Value, and Resource Adequacy (RA) Value.[19] These values are calculated by multiplying eligible resource output (quantities) by the relevant market-price benchmarks (MPB) (prices).[20]

C. RPS-Eligible Resources Produce Value Through RECs the IOUs Use Immediately or Bank for Later RPS Compliance

RPS value, as one of the components of IOU portfolio value, estimates the financial value attributable to RECs generated by PCIA-eligible resources and retained by the IOU for bundled customer RPS compliance obligations.[21] This RPS value is determined by applying the RPS MPB to the quantity of RECs used by the IOU.[22] To the extent an IOU uses RECs to meet the needs of bundled customers, the PCIA design requires bundled customers to "purchase" departed load customers' share of the RECs. This conveys the value of the RECs to departed load and ensures indifference according to California law.[23] That "purchase" is priced at the RPS MPB.[24]

RPS value is unique (when compared to energy and RA) because IOUs can place a REC into a "bank," which means that the REC can be saved to be used for a later compliance period.[25] Therefore, the IOU can choose to separate in time a REC's generation (and banking) period from when the REC is used for RPS compliance.[26]

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[19] *See, e.g.,* D.11-12-018 at 9-10, Ordering Paragraph (OP) 5, and OP 8; D.19-10-001 at 6 ("Market Value is the estimated financial value, measured in dollars, that is attributed to a utility portfolio of energy resources for the purpose of calculating the [PCIA] for a given year."). D.23-06-006 subsequently also required Energy Division to calculate a separate MPB for Greenhouse-Gas Free (GHG-Free) energy. *See also* Ex. CCA-01 at 6:18-7:2.

[20] Ex. CCA-01 at 7:2-3.

[21] *Id.* at 8:15-17 (citing D.19-10-001 at 6, 26; D.11-12-018 at 8, 10, and Conclusion of Law (COL) 3).

[22] *Id.* at 8:17-18. RPS value may also include revenue received when the IOU's RECs are sold to third parties.

[23] *Id.* at 8:18-9:1.

[24] *Id.* at 9:1-2.

[25] *Evidentiary Hearing Reporters' Transcript,* R.25-02-005, Vol. 1 (Pages 1-214) (EH Tr.) 29:2-11; 30:9-14 (Joint IOU Panel [Brown, Morien, Pulgar]): https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M608/K212/608212027.PDF.

[26] *Ibid.*; Ex. CCA-01 at 9:3-5; *see* section 399.13(a)(5)(B) (ordering the Commission to adopt "Rules permitting retail seller to accumulate, beginning January 1, 2011, excess procurement in one compliance period to be applied to any subsequent compliance period.").

D. To the Extent the IOUs Withdraw Pre-2019 Banked RECs for Bundled Customer RPS Compliance After the Year in Which They Were Generated and Banked, Payment for the RECs and Realization of the Benefits Occur at Different Times

Prior to 2019, bundled customers paid through generation rates for the cost of IOU generation resources, including RPS-eligible resources that generated RECs, whether those RECs were used for compliance in the year generated or banked for later use.[27] Customers who had already departed bundled service (Previously-Departed Customers) also paid for a share of these IOU generation resources on a vintaged basis through PCIA rates.[28] Each year, the IOUs would forecast the quantity of RECs from PCIA-eligible resources that would not be sold to third parties, and these RECs were valued in the PCIA for Previously-Departed Customers using the RPS MPB in the year of generation.[29] The value was credited to the PCIA, providing a partial offset to the costs paid by Previously-Departed customers.[30] Decision 11-12-018 therefore delineated payment for the RECs when they were generated and banked between Previously-Departed Customers (i.e., who received a credit for their share of the RECs) and customers who were bundled at the time the REC was generated (Then-Bundled Customers) who paid for the RECs in their generation rates.[31] All Then-Bundled therefore paid for any RECs the IOUs banked for later use.[32] Therefore, while Then-Bundled Customers had access to those RECs for later use, D.11-12-018 did not address the possibility that additional Then-Bundled Customers may depart for unbundled service (i.e., becoming Later Departing Customers) and that their portion of the RECs remained in the bank, paid for but not used (at which time they would

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27 Ex. CCA-01 at 9:8-10.
28 *Id.* at 9:10-12.
29 *Id.* at 9:12-14.
30 *Id.* at 9:14-16.
31 *Id.* at 9:8-17.
32 *Id.* at 9:16-17.

provide value). In fact, the Decision at issue here even states that "[t]he Commission did not recognize "Later Departing [Customers]" as a customer group in D.11-12-018 in any way."[33]

In 2019, the Commission refined D.11-12-018's requirements, deferring payment by bundled customers for banked RECs until they are used for compliance and, likewise, deferring compensation to departing load for those RECs until they are used for compliance.[34] These new requirements recognized that customers do not realize the value of the IOUs' banked RECs until those RECs are used for bundled customer RPS compliance (or sold).[35] At that time, bundled customers are charged for the cost of those RECs at the then current market value (i.e., the RPS MPB) and an offsetting credit is included in the PCIA.[36] This credit to the PCIA for the value of RECs compensates departed load customers for the value of their share of the RECs.[37] These refinements, however, did not upset the original accounting for Pre-2019 Banked RECs.[38] Decision 19-10-001 only applied the new accounting methodology to valuation of RECs generated and banked after the decision (i.e., Post-2018 RECs), and did not address the Pre-2019 Banked REC valuation methodology.[39]

E. The Four Relevant Customer Groups in the Context of Pre-2019 Banked RECs

Four partially overlapping categories of customers exist in the context of Pre-2019 Banked RECs:

- **Previously-Departed Customers –** customers who had already departed at the time the RECs were banked;

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33 Decision, Finding of Fact (FOF) 4.
34 *See generally* D.19-10-001.
35 *Id.* at 35.
36 Ex. CCA-01 at 10:9-12.
37 *Id.* at 10:12-13.
38 *Id.* at 10:13-14.
39 *Id.* at 10:13-16.

- **Then-Bundled Customers –** customers who were bundled at the time the RECs were banked (these customers are, today, either Current-Bundled or Later Departing Customers);

- **Current-Bundled Customers –** customers who are currently bundled and on whose behalf the banked RECs are now being used; and

- **Later Departing Customers –** customers who departed after the RECs were banked and who no longer remain in the group of customers on whose behalf the RECs are now being used.[40]

Later Departing Customers paid for a share of the Pre-2019 Banked RECs when they were Then-Bundled Customers, but upon their departure from bundled service were not paid for those RECs which remained in the bank, ready for future use.[41] These Later Departing Customers number in the millions, constituting a significant portion of the customers in each IOU's service territory—between 29 percent and 66 percent, depending on the IOU and the REC generation year.[42] Thus, although the relationship between customer count and load is not one-to-one, the corresponding share of each IOU's pre-2019 REC bank that was paid for by Later Departing Customers, but for which Later Departing Customers will not receive any benefit, is similarly significant.

Recently, the Joint IOUs began to use Pre-2019 Banked RECs to meet their RPS compliance requirements for Current-Bundled Customers, thus avoiding the purchase of

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[40] *Id*. at 10:23-11:4, 12:3-8.

[41] *Id*. at 13:9-11. During Oral Argument on the Track 2 Proposed Decision, CalCCA Counsel Tim Lindl provided a practical example: "Let's pretend it's 2017; you're a bundled customer; you live in Woodland [California], and you're going to pay your ERRA rates going forward. So you've paid for RPS compliance. There are other departed customers: [in] Sonoma, Marin, et cetera. You're a bundled customer. So you have to pay those customers a credit for the renewable value; right. So that's the bargain at the time is between you, as a bundled customer, and them, as departed customers. In 2018, [the CCA] Valley Clean Energy Alliance [VCE] forms and you are opted in [to be served by VCE], and now you are a departed customer; right. So now you've paid for a REC that you can't get any benefit from. And you don't get any benefit from until the Utilities use that REC in the future. So now you're not benefiting from something that you've paid for previously unless you get a credit today. Another way of say this is in 2017, the issue was between then departed customers and bundled customers, but you were a bundled customer at that time. This issue is different. You never got a credit in 2017, and you won't get a credit under the PD."). OA Tr. at 250:4-24.

[42] Ex. CCA-01 at 13:11-12 to 14:1-2.

additional RECs at current market prices.[43] As a result, Current-Bundled Customers receive the value of the Pre-2019 Banked RECs.[44] However, Later Departing Customers still have not received any value for the Pre-2019 Banked RECs for which they also paid when they were Then-Bundled Customers—neither the 'avoided cost' value Current-Bundled Customers enjoy nor the ability to use those banked RECs for Later Departing Customers' own RPS compliance.[45] These Later Departing Customers will not otherwise receive any benefit when the IOUs use the RECs for Current-Bundled Customer compliance needs.[46] Absent a credit to the PCIA or an allocation of these Pre-2019 Banked RECs, Later Departing Customers will not receive a share of the value of those RECs, despite paying for a share of their costs.[47]

CalCCA proposed valuing the RECs at the RPS MPB through a vintage-specific credit in the PCIA.[48] The IOU would record the credit to the PCIA vintage in the year the RECs were generated, which would avoid any double credit to customers that had already departed.[49] As an alternative, CalCCA proposed that the Commission could utilize section 366.2(g)'s "allocation" option to achieve indifference regarding the IOUs' use of Pre-2019 Banked RECs.[50] To achieve indifference using this pathway, the Commission would require the IOUs to proportionately allocate Pre-2019 Banked RECs to the customers who paid for these RECs via a decrement to

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43 *Id*. at 14:3-5.
44 *Id.* at 14:5-6.
45 *Id.* at 14:6-9.
46 *Id.* at 14:9-11.
47 *Id.* at 14:11-13.
48 *Id.* at 16:21-24.
49 *Id.* at 16:21-24. By recording the credit to the PCIA vintage in the year the RECs were generated, already departed customers will not get a second credit. Therefore, if you departed in 2014, and a REC was generated in 2015, you would not receive a credit. *See* OA Tr. 255:8-16.
50 Brian Dickman, *Track 2 Direct Testimony of Brian Dickman Addressing the Staff Report and Proposals on Pre-2019 Banked Renewable Energy Credits on Behalf of the California Community Choice Association* (May 12, 2026) (Ex. CCA-03), at 22:3-14: https://docs.cpuc.ca.gov/PublishedDocs/SupDoc/R2502005/9283/606453739.pdf.

the applicable load-serving entity's (LSE) RPS Procurement Need.[51] This alternative, allowed by section 366.2(g), avoids any arguable cost increase for bundled or unbundled customers because the attributes simply get allocated rather than requiring bundled customers to compensate departed customer for their value and is a simple accounting modification.[52] While the Decision addresses CalCCA's valuation proposal in its finding of zero value for Pre-2019 Banked RECs in the PCIA, it did not make any findings rejecting CalCCA's allocation proposal.

F. After Years of Considering and Valuing Pre-2019 Banked RECs on an Interim Basis, Track 2 Was Established to Resolve the Disputed Treatment

The Commission considered differing treatments of Pre-2019 Banked RECs in multiple Energy Resource Recovery Account (ERRA) forecast proceedings, as well as in the last PCIA proceeding, R.17-06-026. In fact, the Decision constitutes the *thirteenth* decision contemplating how to resolve this issue.[53] The Commission's treatment of this issue over many years demonstrates that it remained unresolved until this Track 2 was established to address this "exigent" issue:[54]

- Several decisions described their treatment of this issue as interim, limited to the proceeding, or pending resolution in a rulemaking;[55]

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[51] *Id.* at 6-8.

[52] *See* OA Tr. at 246:17-247:19; *see also* Ex. CCA-03 at 22:3-14 (describing CalCCA allocation proposal).

[53] OA Tr. at 222:14-16.

[54] *Assigned Commissioner's Amended Scoping Memo and Ruling,* R.25-02-005 (Feb. 3, 2026), at 2.

[55] *See* D.25-12-028, *Decision Approving Southern California Edison Company's 2026 Energy Resource Recovery Account-Related Revenue Requirement Forecast,* A.25-05-008 (Dec. 18, 2025), at 111-113, COL 14 ("interim"); D.25-12-027, *Decision Approving Pacific Gas and Electric Company's 2026 Energy Resource Recovery Account Related Forecast Revenue Requirement and 2026 Electric Sales Forecast,* A.25-05-011 (Dec. 18, 2025), at FOF 15 ("on an interim basis for the purpose of this decision"); D.24-12-039, *Decision Approving Southern California Edison Company's 2025 Energy Resource Recovery Account-Related Forecast Revenue Requirement,* A.24-05-007 (Dec. 19, 2024), at 68 (approving treatment "for this proceeding"); D.24-08-004, *Decision Denying Petition for Modification of Decision 23-06-006,* R.17-06-026 (Aug. 1, 2024), at 5 (denying SCE's Petition for Modification and saying the Commission "may consider the issue in a future rulemaking"); D.23-11-094, *Southern California Edison Company's 2024 Energy Resource Recovery Account Forecast,* A.23-06-001 (Nov. 30,

- SCE twice agreed with CCAs during the ERRA Forecast proceedings that post-2018 RECs should be utilized first while awaiting a Commission decision on valuation of Pre-2019 Banked RECs;[56]

- PG&E valued pre-2019 banked RECs at the RPS MPB in its 2023, 2024, and 2025 ERRA Forecast proceedings, and this approach was adopted by the Commission;[57]

- Prior to D.23-06-006, which closed R.17-06-026, the Commission asked parties what issues remained unresolved and both the IOUs and CCAs identified Pre-2019 Banked REC valuation as an outstanding, unresolved issue, but the Commission closed the rulemaking without addressing it;[58]

- SCE filed a Petitioned for Modification of D.23-06-006 following the closure of R.17-06-026, and the Commission answered that it may consider the issue in a future rulemaking;[59] and

- The 2026 PG&E ERRA Forecast Decision stated that D.19-10-001 did not address this issue.[60] In fact, the Decision denying rehearing (issued after the Track 2 Decision) confirms that "D.19-10-001 does not conclusively resolve what methodology should be used to value pre-2019 banked RECs."[61]

During Track 2, the ALJ issued a Ruling with an Energy Division Staff Report regarding Pre-2019 Banked REC valuation.[62] Energy Division noted in the Staff Report that:

> A significant portion of departed load customers were still receiving bundled service through 2019 when pre-2019 banked RECs were generated. This raises the question of whether customer indifference will be maintained if the benefits of holding and using pre-2019 banked RECs remain entirely with the IOU, when later-departed customers paid in part for them. For example, 80% or more of SDG&E load was in bundled service in 2019 and paid the RPS

2023), at 60 ("interim"); *see also* D.26-10-037 at 13 (summarizing the Commission's approach prior to the Track Two decision as "adopting interim approaches" pending a comprehensive review of this issue).

[56] OA Tr. at 221: 22-24.

[57] *See* D.22-12-044; D.23-12-022; D.24-12-038; *see* D.26-10-037 at 12 ("[T]he Commission has previously approved PG&E's request to value pre-2019 banked RECs at the RPS Adder.").

[58] OA Tr. at 221:25-222:4.

[59] *Id*. at 222:5-9.

[60] D.25-12-027 at 31.

[61] D.26-10-037 at 8; *see also* D.26-10-036 at 10 ("D.19-10-001 did not resolve whether the valuation methodology for RECs banked prior to [2019] should also be modified."), and at 11 (D.19-10-001 "did not clarify whether the Commission should continue to treat pre-2019 banked RECs in the same manner it had prior to the 2019 decision.").

[62] *Administrative Law Judge's Ruling Issuing Staff Report,* Attachment 2, R.25-02-005 (Mar. 27, 2026) (Staff Report).

> adders at the time, whereas remaining banked RECs will serve to meet RPS compliance for the remaining 20% of bundled load.[63]

The windfall to the utilities' bundled load customers described in the Staff Report resulted in Energy Division concluding that "ED staff observe that these banked RECs—which were funded in part by Later Departing Customers—*do have value in that they can be used for compliance*."[64] Energy Division, however, determined that finding the appropriate value for those RECs is "challenging" because "determining and calculating an opportunity cost or hedging value is deeply intertwined in complex procurement planning and market processes."[65] Therefore, Energy Division developed four proposals not on the basis that those proposals would meet indifference, but rather as a "potential compromise[] that may better ensure indifference by reducing the impact on both sets of customers."[66] While CalCCA questioned during the proceeding whether a compromise approach can meet the indifference requirements,[67] Energy Division's finding that value must be recognized is significant.

Along with the Staff Report, parties including CalCCA and the IOUs submitted two sets of Testimony (Direct and Rebuttal) and Opening and Reply Briefs, and participated in an Evidentiary Hearing over Pre-2019 Banked REC valuation. The Public Advocates Office of the California Public Utilities Commission (Cal Advocates) also submitted Reply Testimony that "[i]f Pre-2019 Banked RECs provide current RPS compliance value to bundled customers, that value constitutes a benefit remaining with bundled service that [Section 366.2(g)] requires be fairly and equitably credited to departed load."[68] Cal Advocates also states that "[a]pplying a

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63 *Id*. at 5.
64 *Id.* at 8 (emphasis added).
65 *Id*.
66 *Id*. at 9.
67 Ex. CCA-03 at 20:17 to 21:12.
68 Ex. CalAdv-01 at 2:22-24.

non-zero value to Pre-2019 Banked RECs is not a "re-valuation" because Banked RECs have been included as a debit to the IOUs' revenue requirement, but they do not provide their full value to customers until used for compliance."[69] Cal Advocates questioned whether the RPS MPB is an accurate valuation of Pre-2019 Banked RECs, but encouraged the Commission to fairly allocate the benefits to ensure the Commission doesn't "undermine [its] statutory obligation to maintain customer indifference."[70] Similarly, the Direct Access Customer Coalition and Alliance for Retail Energy Markets, representing direct access customers and Electric Service Providers, also submitted a Reply Brief stating that "Pre-2019 RECs contain value that must be accounted for."[71]

G. The Decision Denies Any Value to Later Departing Customers for IOU Use of Pre-2019 Banked RECs for Current-Bundled Customer RPS Compliance

After seven months of litigation just in Track 2 over the value of Pre-2019 Banked RECs, the Commission issued D.26-09-047, denying any value, and finding that:

- The indifference mandates do not require any "additional" valuation for Pre-2019 Banked RECs when they are used for bundled customer compliance because the Commission-determined benefits of the RECs were "fully allocated" under the pre-2019 methodology set forth in D.11-12-018 and that "is all the indifference mandates required";[72]

- CalCCA's proposal is inconsistent with D.19-10-001, which "exempted Pre-2019 Banked RECs from the new PCIA methodology that would require bundled customers to credit the PCIA for RECs used to satisfy bundled customer compliance requirements only in the years they are used for that purpose," and

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69 *Id*. at 5:8-10.

70 *Id*. at 6:22 to 8:13. While Cal Advocates acknowledged Pre-2019 Banked REC value during the proceeding, during Oral Argument on the Proposed Decision Cal Advocates voiced support for the Proposed Decision, stating that the PD's determinations "modify some of the assumptions upon which Cal Advocates' previous recommendations and testimony were based." OA Tr. at 226:5-227:7.

71 *Reply Brief of the Direct Access Customer Coalition and Alliance for Retail Energy Markets,* R.25-02-005 (June 25, 2026), at 2.

72 Decision at 10, 28-29, 30, 31-32, COL 1, 3, and 4.

requiring bundled customers "to pay an additional cost to use the RECs now would be inconsistent with the indifference statutes";[73]

- "Requir[ing] redress of this single, alleged cost shift that occurred under a prior methodology now, years after the alleged cost shift was adopted in Commission rules, would be arbitrary";[74]

- CalCCA "is essentially arguing that the RPS valuation methodology adopted by D.11-12-018 was legal error . . . However, neither CalCCA nor its members sought rehearing of D.11-12-018 on these bases" or sought rehearing or filed a petition for modification of D.19-10-001, and therefore CalCCA's claims are untimely; and

- CalCCA's claim is barred by the equitable doctrine of laches, given the unreasonable delay in challenging D.19-10-001, and the prejudice of that delay on other stakeholders who relied on the prospective nature of D.19-10-001.[75]

As set forth below, all of these findings constitute error.

III. STANDARD OF REVIEW

Per Commission Rule 16.1(c) and sections 1731 and 1732, an AFR must set forth specifically the grounds on which a decision in question is "unlawful or erroneous" with references to the law and the record. The purpose of an AFR is "to alert the Commission to a legal error, so that [it] may correct it expeditiously"[76] and to "provide[] the Commission with sufficient notice to respond to [the] claims."[77]

Sections 1757 and 1757.1 govern later judicial review, not the Commission's rehearing procedure. Section 1757 applies to complaint or enforcement proceedings and ratemaking or licensing decisions of specific application addressed to particular parties; section 1757.1 applies to proceedings outside that category. Because this Decision issued in a rulemaking, section 1757.1 may govern any later writ review. This AFR preserves the section 1757 grounds in the

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73 *Id*. at 10-11, 32-33.
74 *Id*. at 11.
75 *Id*. at 36-39.
76 Commission Rule 16.1(c).
77 *Util. Consumers' Action Network v. Pub. Util. Comm.* (2010) 187 Cal.App.4th 688, 705.

alternative if the Decision is treated as a ratemaking decision of specific application, while also identifying the corresponding section 1757.1 grounds.

If section 1757 governs, the principal review grounds asserted here, as described more fully below are:

- Action without or in excess of the Commission's statutory powers or jurisdiction (Section 1757(a)(1));
- Failure to proceed as required by law (Section 1757(a)(2));
- A decision unsupported by its findings (Section 1757(a)(3));
- Findings unsupported by substantial evidence in light of the whole record (Section 1757(a)(4)); and
- Abuse of discretion (Section 1757(a)(5)).

If section 1757.1 governs because this is a rulemaking decision, the corresponding grounds, as described more fully below, are:

- Abuse of discretion (Section 1757.1(a)(1));
- Failure to proceed as required by law (Section 1757.1(a)(2));
- Action without or in excess of the Commission's statutory powers or jurisdiction (Section 1757.1(a)(3)); and
- A decision unsupported by its findings (Section 1757.1(a)(4)).

IV. GROUNDS FOR REHEARING

The Decision directs zero-dollar valuation for all Pre-2019 Banked RECs for purposes of the three IOUs' annual PCIA indifference amounts going forward, and also applies that method immediately to the 2027 ERRA October Updates, impacting 2026 true-ups and 2027 forecast rates.[78] The Decision rests on multiple prejudicial legal errors, each independently requiring

[78] Decision at OP 1-2.

rehearing and vacatur of the zero-dollar valuation. The legal errors are summarized below, and described in more detail herein:

A. The Decision Misinterprets Section 366.2(g) by Finding Indifference Satisfied by a Historical Credit to Previously-Departed Customers

Section 366.2(g) requires the Commission to account for "any benefits that remain" with bundled customers. The generation-year market-value credit to Previously-Departing Customers and a later compliance value for Later Departing Customers are distinct benefits, realized at different times and by different customer groups. The Commission cannot treat the historical credit as compensation for the later benefit without record-supported findings that establish that relationship.

The statutory misinterpretation constitutes Commission action beyond its authority and failure to proceed as required by law under section 1757(a)(1) and (2); or section 1757.1(a)(2) and (3), if the Decision is reviewed as a rulemaking decision.

B. The Decision Misapplies Section 1731 By Finding CalCCA's Claim for Valuation of Pre-2019 Banked RECs Untimely

Neither D.11-12-018 nor D.19-10-001 determined whether Later Departing Customers are entitled to a share of the compliance value when the IOUs later use Pre-2019 Banked RECs for their bundled customer RPS compliance. CalCCA therefore was not required to seek rehearing of those decisions under section 1731 on an issue the Commission did not decide. The present Decision makes that determination, and this AFR timely challenges it.

The untimeliness ruling and the incorrect application of section 1731 to a matter not determined in the earlier proceedings constitute a failure to proceed as required by law and abuse of discretion, under section 1757(a)(2)and (5); or section 1757.1(a)(1) and (2), if section 1757.1 governs.

C. The Decision Fails to Satisfy Section 1705's Findings Requirement and Lacks Adequate Evidentiary Support

The Decision 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 Departing Customers for Pre-2019 Banked RECs satisfies the statutory indifference requirements today. Section 1705 requires the Decision to "contain separately stated, findings of fact and conclusions of law on all issues material to the order or decision."

The Decision thus fails to proceed as required by law, is not supported by its findings, and the findings lack substantial-evidence support, under section 1757(a)(1), (3), and (4); or under section 1757.1(a)(2) and (4), if section 1757.1 governs.

D. The Decision Fails to Address CalCCA's Proposed Cost-Neutral Allocation Alternative, Violating Section 1705's Findings Requirement and Constituting an Abuse of Discretion

The Commission violates section 1705 and abuses its discretion by failing to consider CalCCA's proposed allocation alternative, which would not result in any purported cost increases, despite concluding that it cannot value Pre-2019 Banked RECs at anything other than zero given that would result in "unreasonable rates for bundled customers" and an increase in their costs.[79]

Failure to address the allocation alternative constitutes a failure to proceed in the manner required by law, is not supported by the findings, the findings are not supported by substantial evidence in light of the whole record, and is an abuse of discretion under section 1757(a)(2)–(5); or section 1757.1(a)(1) and (2), and (4), if section 1757.1 governs.

[79] Decision at 29; OA Tr. at 245:23-25 (Commissioner Baker stating at Oral Argument that "we really don't want to impose costs on anyone right now" and "Let's just try to solve this in a way that doesn't cost anybody – any ratepayers any money").

E. The Laches Ruling is Unsupported and Inconsistent with the Commission's Treatment of the Issue as Unresolved

CalCCA has repeatedly challenged zero valuation when the Pre-2019 Banked REC issue arose; the Commission repeatedly resolved the issue on an interim or proceeding-specific basis and set Track 2 to decide it. The IOUs themselves said there was no guidance for accounting for banked RECs used for compliance. The Decision does not identify the specific detrimental reliance caused by CalCCA's conduct required to reach its laches conclusion.

With its laches ruling, the Commission does not proceed as required by law, the Decision is not supported by its findings, the findings are not supported by substantial evidence in light of the whole record, and the decision constitutes an abuse of discretion under section 1757(a)(2)–(5); or section 1757.1(a)(1), (2), and (4), if section 1757.1 governs.

F. The Decision's Zero Valuation Creates Unreasonable Discriminatory Treatment of Later Departing Customers and Current-Bundled Customers Under Section 453

Customers who paid for the same RECs receive materially different treatment in violation of section 453 based solely on whether they have since departed from bundled service: Current-Bundled Customers receive the entire compliance value and Later Departing Customers receive none.

The discriminatory-rate determination constitutes action by the Commission beyond its authority and a failure to proceed as required by law under section 1757(a)(1) and (2); or section 1757.1(a)(2)–(3), if section 1757.1 governs.

G. Conclusion of Law 5, Which Finds That Resolving Indifference for One Set of Customers in Isolation from Other Alleged Prior Cost Shifts Would Be Arbitrary, is Erroneous

The Commission finds that retroactively making whole Later Departing Customers "who claim they were made not indifferent under a prior methodology in isolation of other prior

alleged costs shifts" would be arbitrary.[80] This arbitrariness finding, however, is wholly unsupported given the lack of proof of any prior cost shifts, and the fact that any past cost shifts would have fallen equally on all Then-Bundled Customers, which included Later Departing Customers. The Commission adopts the untenable principle that the failure to correct one identified cost shift in violation of statute can be justified by other failures to comply with the law by allowing other cost shifts, which may or may not exist. In addition, failure to resolve a proven present cost shift is an abuse of discretion and is not in accordance with law.

The Commission's arbitrariness finding results in it not proceeding as required by law, is not supported by the findings, the findings are not supported by substantial evidence in light of the whole record, and is an abuse of discretion under section 1757(a)((2)–(5), or section 1757.1(a)(1) and(2), and (4), if section 1757.1 governs.

Each legal error is described in detail below.

V. THE COMMISSION ACTED BEYOND ITS STATUTORY AUTHORITY AND FAILED TO PROCEED IN THE MANNER REQUIRED BY LAW BY FAILING TO COMPLY WITH SECTION 366.2(G)'S REQUIREMENT TO PROVIDE VALUE FOR BENEFITS THAT REMAIN WITH BUNDLED CUSTOMERS

Section 366.2(g) requires the Commission to ensure that "estimated net unavoidable electricity costs paid by [CCA customers] shall be reduced by the value of *any benefits that remain with bundled service customers,* unless the [CCA customers] are *allocated a fair and equitable share of those benefits*."[81] The Commission acted beyond its statutory authority and failed to proceed in the manner required by law and set forth in section 366.2(g) by assigning zero value to Later Departing Customers when the IOUs use Pre-2019 Banked RECs for bundled customer RPS compliance. As set forth below, the Decision: (1) fails to recognize section

[80] Decision at COL 5.
[81] Section 366.2(g) (emphasis added).

366.2(g)'s ongoing requirement to ensure indifference between unbundled and bundled customers in its finding that D.11-12-018 permanently satisfied the indifference mandates for all future scenarios; (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; and (3) errs in its characterization of CalCCA's arguments as a request to modify D.11-12-018 and D.19-10-001, rather than an application of section 366.2(g) prospectively to a benefit being realized in the present.

A. Section 366.2(g) Requires the Commission to Account for Benefits That Remain with Bundled Customers, and Doing So Is Neither Duplicative Nor Retroactive

The Decision 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. Banking RECs preserves their compliance value for later use, separating the realization of the benefit from the year the underlying costs are incurred. The Decision states that "the Legislature 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."[82] Yet it imposes a categorical timing rule: once the Commission assigned a generation-year market value in D.11-12-018, all statutory indifference obligations concerning those RECs were satisfied, even though they remained banked and later provided compliance value to bundled customers.[83] That rule appears nowhere in the statute and reads "any benefits that remain"—language phrased in the *present* tense—out of section 366.2(g).

The Commission is also incorrect: section 366.2 *does* specify the time frame over which costs and benefits must be allocated. Section 366.2(f)(2) establishes that unbundled customers

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82 Decision at FOF 1.

83 *Id*. at FOF 3, COL 1.

must reimburse the utilities for "estimated net unavoidable electricity purchase contract costs," and it contains an express timing clause for that reimbursement. The costs must be reimbursed "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 electrical corporation." Section 366.2(g), referring to the reimbursement of "estimated net unavoidable electricity costs" described in (f)(2), provides an off-setting mechanism that reduces the cost reimbursement by the value of the benefits that remain. Section 366.2(g) is inextricably tied to 366.2(f)(2). It thus creates an ongoing obligation—for the Commission to account for benefits—that runs for as long as unbundled customers are paying costs under (f)(2). Nothing in the statute supports the Commission's conclusion that it satisfied its obligations to account for benefits through a past one-time payment.

The Decision finds that the adoption of the cost allocation methodology in D.11-12-018 for RECs in the years the renewable resources were generated achieved indifference.[84] Therefore, according to the Decision, bundled customers satisfied section 366.2(g) by crediting departing load the market value of Pre-2019 Banked RECs in those generation years, which is "all the indifference mandates required."[85] However, that reasoning fails to address whether the methodology accounted for Later Departing Customers' share of the subsequent compliance benefit. Instead, the Decision states that "the Commission was aware, and stakeholders knew or reasonably should have known," that the banked RECs could be used for future compliance.[86] The Decision also states that the Commission "did not confer a right to a deferred benefit on Later Departed Load or recognize this customer group in any way."[87]

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84 *Id*. at COL 1.
85 *Id*. at 30.
86 *Id*. at 31, and FOF 5.
87 *Id*. at 31, and FOF 4.

Regardless of what the Commission did (or did not do) in D.11-12-018, section 366.2(g) *requires* the Commission to value the deferred benefit. To the extent that a methodology fails to account for a benefit remaining with bundled customers, section 366.2(g) requires that the Commission modify that methodology and value it. The Commission has modified the PCIA methodology before, including by adopting a true-up in D.18-10-019[88] and revising the RA benchmark in the Track 1 Decision.[89] The statutory requirement controls the methodology—not the reverse.

The Decision compounds this error by characterizing recognition of the later compliance benefit as requiring bundled customers to "credit the PCIA *again*"[90] and pay an "*additional* cost to use [the RECs]."[91] But this conflates different groups of bundled customers and which costs they paid in the generation year. The generation-year credit did not compensate Later Departing Customers for the benefit at issue here; in fact, the benefit was partially *paid for* by Later Departing Customers. Those customers were still bundled, paid their share of the associated costs when the RECs were generated and banked, and departed before the RECs were used for bundled RPS compliance. They could not have received the historical PCIA credit because they were still bundled customers at the time. Providing their share of the later compliance benefit therefore does not credit any customers "again"; it accounts for a benefit Later Departing Customers paid for but never received.[92] The Decision's concern that recognizing this benefit

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88 D.18-10-019 at COL 1 ("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.").

89 D.25-06-049 at COL 1 ("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.").

90 *See* Decision at 3, 43.

91 *See id*. at 10, 28, 29, 34, FOF 9, and COL 3-4.

92 *See supra,* n. 41.

would impose an additional cost on bundled customers also does not resolve the relevant statutory question.[93] A charge reflecting a benefit bundled customers receive is not, merely because it increases their costs, a prohibited cost shift under sections 366.3 and 365.2. To find otherwise would completely undermine the structure of the PCIA and the indifference framework, and would directly conflict with section 366.2(g), which requires the Commission to account for all benefits *remaining with bundled customers.* Whether a corresponding credit is required turns on the fair allocation of that benefit, not solely on whether bundled customers would pay more than under the existing methodology. Under the Decision, bundled customers retain the *entire* later compliance benefit, including the share attributable to Later Departing Customers, without providing those customers a corresponding credit. In effect, Current-Bundled Customers are receiving the Later Departing Customers' share of the compliance benefit *for free.* In this way, the zero valuation for Pre-2019 Banked RECs used for Current-Bundled Customers' present RPS compliance also creates a prohibited cost shift under sections 366.2(a)(4), 366.3, and 365.2, because it causes Later Departing Customers to subsidize Current-Bundled Customers' present RPS compliance, creating a windfall for Current-Bundled Customers. Eliminating that windfall does not create a cost shift—it prevents a cost shift that would otherwise occur when the IOUs use the banked RECs in the present.

The Decision also improperly conflates accounting for a benefit when realized with reopening past rates.[94] CalCCA seeks recognition of the compliance value (and prevention of a cost shift) when the IOUs use the RECs *now*, and does not seek to revise rates charged in the generation years. In fact, the issue only arose when the IOUs began using Pre-2019 Banked

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[93] *See* Decision at 29 ("to require bundled customers to pay an additional cost to use these RECs would violate indifference mandates and would result in unreasonable rates for bundled customers.").

[94] *Id*. at 32.

RECs for bundled customer compliance. The Decision itself applies its treatment to the 2026 true-ups and 2027 forecast rates, confirming that the Commission is determining the rate treatment of these compliance benefits *in those periods*.[95] The Commission cannot establish that CalCCA's proposed treatment is retroactive merely by pointing to when the RECs were generated or their costs incurred. Accounting for the compliance benefit in the period it is realized by bundled customers prospectively applies section 366.2(g) to that use.

B. Neither D.19-10-001 Nor the Working Group Report Resolved Whether Later Departing Customers Must Receive Credit for the Later Compliance Benefit

The Decision separately errs by treating D.19-10-001 and the preceding Working Group Report as having resolved the valuation issue presented in Track 2.[96] It relies on the Report's statement that Pre-2019 Banked RECs "have already been bought and paid for by bundled customer[s] at previous years' RPS Adders," together with the statement that the post-2018 methodology adopted in D.19-10-001 applies only prospectively, to conclude that the RECs were fully allocated and that further recognition of their value would violate indifference.[97]

Neither proposition resolves the question here. The Report's statement concerns the historical treatment of the RECs; it does not determine how to account for the compliance benefit when customers who helped fund those RECs subsequently depart. Indeed, the statement that bundled customers paid for the RECs does not establish that those vintages of customers who later departed surrendered their share of the benefits preserved through banking. Later Departing Customers *were* some of the bundled customers who "bought and paid for" their share of the Pre-2019 Banked RECs, as were Current-Bundled Customers who paid for their share. Bundled

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95 *See id*. at OP 2 (requiring incorporation of the zero valuation into the 2026 true-ups and 2027 forecasted rates).

96 *Id*. at 32-34.

97 *Id*.

customers never pay other bundled customers for RECs at the RPS MPB; the Report was addressing customers who had already departed and already received a credit, to ensure they did not receive a second credit.[98] Likewise, establishing the prospective application of post-2019 Banked RECs does not affirmatively establish that Pre-2019 Banked RECs should receive zero value.

Neither the Working Group Report nor D.19-10-001 addressed whether section 366.2(g) requires recognition of the later benefit. Their silence cannot establish that the Commission previously resolved the issue or fully satisfied the statutory indifference obligation. The Decision therefore cannot rely on those materials to foreclose consideration of the benefit retained for bundled customers when the IOUs use Pre-2019 Banked RECs for RPS compliance on behalf of its bundled customers. The Commission must instead comply with section 366.2(g) and compensate Later Departing Customers with "the value of any benefits that remain with bundled service customers"—i.e., the value of the Pre-2019 Banked RECs to bundled customers when they are used for RPS compliance. A zero-valuation does not comply with that requirement and should be vacated on rehearing.

VI. THE COMMISSION FAILED TO PROCEED IN THE MANNER REQUIRED BY SECTION 1731 AND ABUSED ITS DISCRETION BY FINDING CALCCA'S CLAIMS UNTIMELY

The Decision recasts CalCCA's position from seeking indifference *today* under section 366.2(g) into an allegation of a cost shift and legal error in D.11-12-018 and D.19-10-001.[99] The Decision concludes that CalCCA's claim is untimely because it failed to seek rehearing of those decisions pursuant to section 1731(b)(1).[100] Section 1731(b), however, allows rehearing only of

98 *See* OA Tr. at 223:3-21 and 261:14-262:6.
99 Decision at FOF 10 and COL 6.
100 *Id*. at FOF 15-17 and COL 6.

"matters determined in the action or proceeding." The Commission errs because neither D.11-12-018 nor D.19-10-001 *determined* the indifference treatment applicable when Pre-2019 Banked RECs are later used for bundled customer 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 Decision itself even finds that D.11-12-018 did not recognize Later Departing Load as a customer group.[101] However, despite that conclusion, the Decision finds that at the time it adopted D.11-12-018, the Commission "was aware of the bankable nature of RPS compliance instruments" and "omitted credits for customers who were not yet departing load."[102] And, the Decision states that the Commission "did not adopt a framework that required the RECs to be valued again in the year the RECs are used to satisfy bundled customer compliance obligations to impart additional value to Later Depart[ed] Load."[103] First, nowhere in D.11-12-018 does the Commission "omit credits" for Later Departing Load, a group of customers that the Decision acknowledges was not recognized in D.11-12-018. In addition, the Decision finds that because D.11-12-018 *did not adopt* a framework for later value, CalCCA is now seeking redress for customers allegedly "rendered not indifferent under prior methodologies . . . ."[104] However, the absence of a determination is not a determination for which CalCCA is now seeking rehearing.

The Commission's reasoning arbitrarily 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

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101 *Id*. at FOF 4. The Joint IOUs also stated at Oral Argument that "[t]he Commission never recognized the category of later departing customers that would be owed additional value if an IOU later used the RECs for compliance." OA Tr. at 230:15-17.

102 Decision at 38.

103 *Id*.

104 *Id*. at 39.

determined that such value must be zero. Decision 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, as the Commission and other stakeholders have repeatedly acknowledged.[105] Indeed, the Commission itself apparently concluded that D.11-12-018 and D.19-10-001 had not conclusively determined this issue when it decided to scope this issue for resolution in this proceeding. In addition, what stakeholders at the time the Commission adopted D.11-12-018 "knew or reasonably should have known" regarding banking RECs and using them in the future to satisfy bundled customer RPS compliance is not relevant to section 1731 and what the Commission affirmatively decided.[106] The Decision therefore invents 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."[107] 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.[108] 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

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105 *See infra.,* Section IX.

106 Decision at FOF 7; *see also* OA Tr. at 224:2-8 ("Silence is not a basis for rehearing. The law permits rehearing only on matters determined, that is matters actually decided in the decision. What stakeholders knew or reasonably should have known has no legal effect. If an issue isn't addressed in a decision, you can't seek rehearing on it because the law says the Commission never decided.").

107 Section 1731(b)(1) (emphasis added).

108 *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 *determine*. . . .").

Commission policy."[109] Indeed, adoption of the Decision'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 Departing 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 Working Group Report addressed how to maintain indifference for Later Departing Customers when those Pre-2019 Banked RECs are subsequently used.[110]

CalCCA and its members' challenge to the current decision was also not ripe prior to the present. Ripeness requires issues that are fit for decision—i.e., that arise from a concrete factual record rather than a controversy that is only hypothetical.[111] Here, the cost shift remained hypothetical until the IOUs began using pre-2019 banked RECs for Current-Bundled Customer compliance and proposing to provide no credit or value to Later Departing Customers in the PCIA. Because the issue was still hypothetical until that time, the parties likewise did not suffer

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109 D.07-12-021 at 20.

110 In fact, SCE petitioned for modification of D.23-06-006, asking the Commission to specify that D.19-10-001's treatment of banked RECs applies only to RECs generated and banked on or after January 1, 2019, and not to Pre-2019 Banked RECs. The Commission denied the petition. It recognized that "parties have different perspectives about the direction in D.19-10-001 and its applicability to pre-2019 RECs," and stated that it did "not have the record to fully evaluate them here" and "may consider the issue in a future rulemaking." *See* D.24-08-004 at 5; *see also id*. at COL 1 ("In D.23-06-006, the Commission did not modify D.19-10-001.").

111 D.18-05-050, *Order Instituting Rulemaking Regarding Whether to Adopt, Amend, or Repeal Regulations Governing the Award of Intervenor Compensation* (May 31, 2018), at 2 (citing *PG&E Corp. v. Pub. Util. Com.* (2004) 118 Cal.App.4th 1174, 1217).

hardship from the Commission withholding consideration of the issue, another element that is required for an issue to be ripe.[112]

CalCCA and its members had no determination on this issue that they could challenge on rehearing of D.11-12-018 or D.19-10-001. Its Track 2 position cannot be deemed untimely for failing to challenge a determination that did not exist. The Decision also cannot arbitrarily supply that determination now and retroactively fault CalCCA for failing to challenge it years earlier. Moreover, CalCCA cannot be penalized for having failed to assert a challenge that was not ripe. The Decision's arbitrary untimeliness conclusion should be rejected.

VII. THE COMMISSION FAILED TO PROCEED IN THE MANNER REQUIRED BY SECTION 1705, FAILED TO SUPPORT ITS DECISION WITH FINDINGS ON ALL MATERIAL ISSUES, AND THE FINDINGS LACK SUBSTANTIAL EVIDENCE SUPPORT

While the Decision contains findings, those findings fail to comply with section 1705's requirement that the findings resolve "issues material to the . . . decision" that zero valuation satisfies section 366.2(g). In other words, the Commission must make findings to support its conclusion that assigning the entire compliance value to Current Bundled Customers while providing zero value to Later Departing Customers for Pre-2019 Banked RECs satisfies the statutory indifference requirements. 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." 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.'"[113] The Commission therefore must make the requisite findings upon which that ultimate conclusion rests.[114] Such findings "afford a rational basis for judicial review," allowing a reviewing court to do more than "only

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112 *Ibid.*

113 *California Motor Transp. Co. v. Pub. Utils. Comm'n* (1963) 59 Cal.2d 270, 273.

114 *Id.* (citations omitted).

guess at how" a conclusion was reached.[115] 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.[116]

The Decision 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 Departing Customers and that those customers have received value for the benefits remaining with bundled customers. Neither does the Commission find that Later Departing 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."[117]

The only related FOF that speaks directly to the cost shift related to Later Departing Customers – 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 10. The alleged cost shift CalCCA is attempting to rectify pursuant to . . . section 366.2(g), is, in fact, an allegation of a cost shift under the pre-2019 framework.

The Decision 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 Departing Customers as a customer group. Neither finding speaks to whether Later Departing Customers are made indifferent under the 366.2(g) standard by receiving no credit for RECs they paid for but did not benefit from, nor do these findings support a conclusion that D.11-12-018 conclusively addressed an issue FOF 4 explicitly states that decision did not consider.

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115 *Id.* at 274 (citations omitted).

116 *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.

117 Sections 366.3 and 365.2.

The Decision's COL likewise are insufficient and, again, fail to address Later Departing Customers:

> 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 Decision also fails to determine or explain the amount and incidence of the compliance benefit. It adopts a zero valuation without weighing CalCCA's evidence that the RPS MPB measures the avoided cost associated with current compliance, without making findings on how much of the RECs paid for by Later Departing Customers were used, and without explaining why a valuation or allocation method would duplicate compensation or impose an unreasonable cost on bundled customers. In fact, CalCCA presented valuation and allocation approaches and explained how they avoid duplicate recovery, which were ignored by the Commission.[118] Absent conclusions on the issues called for by the governing statute these are bare bones conclusory findings that are insufficient to support the Decision.

The Decision'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 Decision therefore fails to satisfy the requirements of section 1705.

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[118] Ex. CCA-01 at 16:15-20:8.

VIII. THE COMMISSION FAILED TO PROCEED IN THE MANNER REQUIRED BY LAW, FAILED TO SUPPORT ITS ZERO VALUATION DECISION WITH ADEQUATE FINDINGS BASED ON SUBSTANTIAL EVIDENCE, AND ABUSED ITS DISCRETION BY OMITTING ANY CONSIDERATION OF CALCCA'S COST-NEUTRAL ALLOCATION ALTERNATIVE

The Commission violates section 1705's findings requirement and abuses its discretion by failing to consider CalCCA's cost-neutral allocation alternative despite concluding that the Commission cannot value Pre-2019 Banked RECs at anything other than zero on the basis that doing so would purportedly result in "unreasonable rates for bundled customers" and an increase in their costs.[119] CalCCA proposed, in the alternative, allocating Pre-2019 Banked RECs to the LSEs serving later departing customers via a decrement to RPS procurement need.[120] The Decision summarizes CalCCA's proposal but never analyzes it.[121] However, the Decision's dispositive rationale that requiring bundled customers to pay a purported additional cost would be unreasonable and would violate indifference— does not apply because allocation imposes no cost on bundled customers.[122] Section 366.2(g) expressly contemplates allocation of a fair and equitable share of benefits as the alternative to a cost reduction. Failure to make findings on a material, record-supported alternative violates section 1705. Because the Decision likewise fails to provide Later Departing Customers with any value (in credit or in kind) for benefits that remain with Current-Bundled Customers, it also violates section 366.2(g) and represents a failure to proceed in the manner required by law.

The Commission's failure to consider CalCCA's cost-neutral allocation alternative is also an abuse of discretion. Under the abuse of discretion standard, the Commission must adequately

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119 Decision at 29; OA Tr. at 245:23-25 (Commissioner Baker stating at Oral Argument that "we really don't want to impose costs on anyone right now" and "Let's just try to solve this in a way that doesn't cost anybody – any ratepayers any money").

120 Ex. CCA-03 at 22:6-8.

121 Decision at 21-22.

122 *Id*. at 29 and COL 3-4.

consider all relevant factors and demonstrate a rational connection between those factors, the choice made, and the enabling statute.[123] The Commission errs by refusing to consider the merits of alternatives that allow the Commission to fulfill its statutory obligations.[124] Here, the Commission had obligations to both provide value for benefits that remain with bundled customers and to ensure no cost increases relative to what would have occurred had the Later Departing Customers remained bundled customers. The refusal even to evaluate a solution that addresses both obligations and addresses the Commission's principal objection to CalCCA's primary proposal means that the Commission both hasn't adequately considered all relevant factors and has failed to demonstrate the required rational connection between the factors, the decision, and the statute.

IX. THE COMMISSION FAILED TO PROCEED IN THE MANNER REQUIRED BY LAW, FAILED TO SUPPORT ITS DECISION WITH ADEQUATE FINDINGS BASED ON SUBSTANTIAL EVIDENCE, AND ABUSES ITS DISCRETION BECAUSE THE LACHES RULING IS UNSUPPORTED AND CONFLICTS WITH THE RECORD OF AN UNRESOLVED ISSUE

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 were timely, ripe, and appropriate for decision on the policy merits in *this* proceeding.

Nevertheless, the Decision erroneously finds that laches bars CalCCA from raising its claims in this proceeding because CalCCA and its members failed to file for rehearing of D.19-

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123 *Securus Technologies LLC v. Public Utilities Commission* (2023) 88 Cal.App.5th 787, 803.

124 *See City and County of San Francisco v. P.U.C.* (1971) 6 Cal.3d 119, 126-30 ("For failure to consider lawful alternatives ... , the decision of the commission must be annulled."); *City of Los Angeles v. P.U.C.* (1975) 15 Cal.3d 680, 684, 704.

10-001.[125] 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.[126] Laches, therefore, requires both "unreasonable delay" and a resulting "prejudice" (or acquiescence).[127] 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."[128] Neither unreasonable delay nor prejudice occurred here, resulting in legal error through the Decision's finding that laches bars CalCCA's arguments.

A. Unreasonable Delay Does Not Exist Because D.19-10-001 Did Not Resolve 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-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. Indeed, the Commission demonstrated that it, too, considered this issue unresolved when it scoped the issue here.

The Commission's statements in ERRA cases demonstrate the reasonableness of CalCCA's position that this question had not been previously addressed and the irrationality of the Commission's sudden reversal. The Commission regularly declines to decide issues that are

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125 Decision at 38 and COL 7.
126 D.15-05-004 at 22.
127 *See Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 68; *see also* D.15-02-040 at 7.
128 *See* D.95-02-016 at COL 4-5.

not ripe,[129] and, as explained above in Section VI, CalCCA's present challenge was not ripe until the IOUs began to use Pre-2019 Banked RECs for Current-Bundled Customer compliance and proposed to value the RECs at zero in the PCIA. Further, the Commission routinely declines to decide open policy questions in the ERRA cases.[130] That occurred as recently as December 2025 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.[131] 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."[132] 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."[133]

The Decision 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).[134] 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

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

130 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.")

131 D.25-12-028 at 111-113 and 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").

132 D.25-12-027 at 26 (emphasis added).

133 *Id*. at 31.

134 Decision at 39.

CalCCA's proposal resulted in just and reasonable rates in these three decisions and then now decide that the matter had already been clearly resolved to *prevent* such treatment over a decade ago? The Commission's inconsistent actions and statements again reveal the arbitrary and irrational nature of its decision-making.

Additionally, the Joint IOUs only recently started considering the need to use Pre-2019 Banked RECs. Indeed, it is also 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.[135] 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."[136] Characterizing CalCCA's position as unreasonably delayed therefore ignores the facts and should be rejected.

The Decision also faults CalCCA for not challenging an IOU's use of banked RECs to satisfy RPS compliance obligations before 2019.[137] The Commission is referencing [redacted]

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135 *See, e.g.*, D.23-11-094 at COL 5-7, OP 9.

136 R.25-02-005, *Amended Scoping Memo* (Feb. 3, 2026), at 2.

137 D.26-09-047 at 23, n.118 ("No party challenged D.11-12-018 for not requiring such a credit, and no party challenged the applicable PCIA rates that did not include the credit CalCCA now claims is required by law on this basis."); FOF 9.

138 Exhibit CCA-[redacted]; section 399.13(a)(5)(B) (ordering the Commission to adopt "Rules permitting retail seller to accumulate, beginning January 1, 2011, excess procurement in one compliance period to be applied to any subsequent compliance period.").

139 *See* OA Tr. at 261:4-9 (discussing the one CCA that existed when D.11-12-018 was issued).

[redacted] Under these circumstances, it is illogical and arbitrary to fault CalCCA or its members for failing to challenge that IOU's proposal and resulting rates.

B. The Decision'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 Decision 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 Decision 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."[140] 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

[140] Decision at 37. In fact, market evidence rebuts the Decision's statements regarding downstream-consequences and the market offer decisions. *See, e.g., id*. at 40-42 and FOF 18. Over the prior 18 months, SCE and SDG&E filed nine advice letters to buy PCC-3 RECs (eight SCE, about 1 million RECs; one SDG&E, 150,000 RECs). A July 29, 2026, SDG&E Advice Letter states that PCC-3 purchases were cheaper than using its REC bank. In other words, the IOUs were already doing these transactions regardless of the uncertainty of the valuation of the RECs. And these transactions had essentially no impact on the market – in fact, prices dropped (PCC-1 from $20 to $11/MWh; PCC-3 prices dropped in 2025 $3 to $2, and in 2026 from $4 to $2.45). OA Tr. at 267:2-269:16. During the Oral Argument, SCE even conceded its PCC-3 purchases constitute ordinary portfolio optimization, not driven by this proceeding. OA Tr. at 269:17-23.

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 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.[141]

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."[142] 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."[143] 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.[144]

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

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141 *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.

142 *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.

143 *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.

144 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")).

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 Decision's reliance on laches to reject CalCCA's claims must be rejected as legally erroneous and arbitrary.

X. THE COMMISSION ACTED OUTSIDE OF ITS AUTHORITY AND FAILED TO PROCEED IN THE MANNER REQUIRED BY LAW BY UNREASONABLY DISCRIMINATING AMONG CUSTOMERS UNDER SECTION 453 THROUGH THE ZERO VALUATION OF PRE-2019 BANKED RECS

The Decision also results in legal error through discriminatory rates. Section 453(a) bars a utility from "mak[ing] or grant[ing] any preference or advantage" to any person, or "subject[ing]" any person "to any prejudice or disadvantage," as to "rates, charges, service, facilities, *or in any other respect*."[145] Section 453(c) separately bars "any unreasonable difference" in those same respects "as between classes of service."[146] However, the Decision awards the full RPS compliance benefit of a banked REC to Current-Bundled Customers while assigning zero value to Later Departing Customers who paid for the same REC through generation rates before departing.

The Decision violates section 453 in two ways. *First,* two groups paid the same generation rates for the same Pre-2019 Banked RECs. When an IOU withdraws those RECs for Current-Bundled RPS compliance, the Decision awards the entire compliance value to one group and zero to the other, based solely on the second group's decision to take CCA service. That is an "advantage" to one group, a "prejudice or disadvantage" to the other, and an unreasonable difference in what each pays, and receives, for the same resource.

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145 Section 453(a) (emphasis added).

146 Section 453(c).

Second, the Decision unreasonably treats customers differently depending on when they departed service. Some departed customers paid to generate Pre-2019 Banked RECs that are held in the Joint IOUs' REC bank. Those RECs have exactly the same RPS compliance characteristics as RECs paid to be generated in 2020-2022 by customers who departed later or are still bundled.[147] And yet the Decision unreasonably and unfairly produces disparate treatment for these two groups of customers who paid for RECs that are identically situated from the RPS compliance perspective.

The Commission's violation of section 453 constitutes action outside of its authority and legal error.

XI. THE COMMISSION'S FINDING THAT CORRECTING A PRESENT COST SHIFT WOULD BE ARBITRARY IN LIGHT OF PRIOR ALLEGED COST SHIFTS IS NOT IN ACCORDANCE WITH LAW, CONSTITUTES AN ABUSE OF DISCRETION, AND IS UNSUPPORTED

The arbitrariness ruling is not in accordance with law, is an abuse of discretion, and is unsupported. The Commission claims that "fairness" requires that it not address the present alleged cost shift arising from the bankable nature of RECs because of the existence of "alleged cost shifts from prior PCIA frameworks, *e.g.,* the likely overvaluation of RA resources under the prior RA MPB methodology" which have not been "retroactively undone."[148] It is a perverse kind of fairness that says an error cannot be corrected because other errors may or may not exist. The Decision states that "[i]t would be arbitrary to adopt a rule to retroactively redress one alleged past cost shift in isolation, simply because the bankable nature of RECs ostensibly

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147 *See* CalCCA Opening Brief at 51 (citing Vol. 1 Tr. 54:13-17; 55:4-56:22; 57:6-58:14 (Joint IOU Panel [Brown, Morien, Pulgar])).

148 Decision at 38-39.

creates the window to do so."[149] However, solving an alleged cost shift that has been properly presented to the Commission is not arbitrary, but rather is required by law.

The Commission may address problems as they are presented to it, even if it does not solve all problems of that type at once.[150] The Commission also has a legal obligation to ensure indifference and prevent cost shifts.[151] Combining these strands, far from it being arbitrary for the Commission to address a single cost shift that has been presented to it, the Commission *must* do so, as long as doing so is not invidiously discriminatory. Here, the unique nature of banked RECs—i.e., the fact that they may be banked for future use[152]—demonstrates that addressing this particular cost shift—and not others alleged, which, are both not supported by a detailed factual record and, unlike the present cost shift, fell equally on all Then-Bundled Customers rather than uniquely burdening Later Departing Customers[153]-—would not have been invidiously discriminatory. Addressing this present cost shift, unlike the others alleged, also would not have required re-opening any past rates. Given such a present cost shift, the Commission is required to act under the indifference statutes. As a result, the Commission's "arbitrariness" justification should be dismissed on rehearing.

XII. CONCLUSION AND REQUESTED RELIEF

The Decision's zero-dollar rule rests on an erroneous reading of section 366.2(g), an untimeliness ruling that treats silence as a prior determination, findings that do not resolve

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149 *Id*. at 39.

150 *See Pacific Bell Wireless, LLC v. Public Utilities Com.* (2006) 140 Cal.App.4th 718, 739 (Solving problems with respect to certain parties but "not others for the same act" is permissible "unless it can be shown the investigating agency purposefully and intentionally singled out the one company for disparate treatment on an invidiously discriminatory basis."); *BullsEye Telecom, Inc. v. Pub. Util. Com.* (2021) 66 Cal.App.5th 301, 328-31.

151 See sections 366.2 (a)(4), 366.2(g), 366.3, 365.2.

152 OA Tr. at 253:1-24.

153 *Id*. at 272:10-273:4.

questions material to the Decision, a laches conclusion inconsistent with the Commission's own treatment of the issue as unresolved, and an arbitrariness finding that mistakes the Commission's obligations. It also discriminates among customer groups in violation of section 453. The Commission should grant rehearing and adopt a method that accounts for the compliance value of Pre-2019 Banked RECs when that value is realized.

CalCCA therefore respectfully requests that the Commission:

1. Grant rehearing of D.26-09-047;
2. Vacate COL 1–8 and OP 1 to the extent they conclude that Pre-2019 Banked RECs must be valued at zero dollars and that the Commission has no duty to account for their later compliance value;
3. Delete or revise FOF 3–5, 8–10, and 12–18 to correct unsupported inferences and make findings on the customer groups, the historical generation-year credit, the later compliance value, and the allocation of that value;
4. Find that D.11-12-018 and D.19-10-001 did not determine the present section 366.2(g) question and that CalCCA's challenge to D.26-09-047 is timely under section 1731;
5. Reject the laches defense because the record does not establish unreasonable delay and acquiescence or specific prejudice caused by CalCCA's conduct;
6. Adopt a valuation of Pre-2019 Banked RECs at the RPS MPB in the year of use, or allocate the RECs and their compliance value to the customer vintages that paid for them; and
7. In the alternative, reopen the record or return the issue for further findings and determination under sections 366.2(g) and 453, with a method that prevents duplicate recovery while allocating the compliance value to the customers who paid for the RECs.

Because the Decision is effective immediately and directs changes affecting current ERRA updates which will impact customer bills beginning in 2027, CalCCA also requests that the Commission suspend implementation of the zero-dollar methodology pending resolution of this AFR, or issue any other interim relief necessary to preserve an effective rehearing. The Commission has discretion to stay its decisions pending determination of an application for

rehearing.[154] At a minimum, the Commission should direct the IOUs to track all Pre-2019 Banked RECs used for Current-Bundled Customer compliance.

Respectfully submitted,

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[154] *See* D.23-11-052, *Order Staying Resolution TL-19145* (Nov. 9, 2023), at 1 (citing section 1735).