

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

Petition to adopt, amend, or repeal a regulation
pursuant to Pub. Util. Code § 1708.5

P.25-09-009

**CENTER FOR BIOLOGICAL DIVERSITY,
CENTER ON RACE, POVERTY & THE ENVIRONMENT,
CENTRAL CALIFORNIA ASTHMA COLLABORATIVE, AND
LEADERSHIP COUNSEL FOR JUSTICE & ACCOUNTABILITY**

APPLICATION OF THE PETITIONERS FOR REHEARING OF DECISION 26-05-003

ROGER LIN
KATHERINE WHISLER
HOWARD CRYSTAL
CENTER FOR BIOLOGICAL
DIVERSITY
2100 Franklin Street, St. #375
Oakland, CA 94612
Telephone: (510) 844-7100
rlin@biologicaldiversity.org
kwhisler@biologicaldiversity.org
hcrystal@biologicaldiversity.org

SARAH SHARPE
BRIANDA CASTRO
JENNA ROPER
CENTRAL CALIFORNIA ASTHMA
COLLABORATIVE
1939 N. Gateway Blvd. Suite 103
Fresno, CA 93727
Telephone: (559) 272-4874
sarah.sharpe@centralcalasthma.org
brianda.castro@centralcalasthma.org
jenna.roper@centralcalasthma.org

GRECIA OROZCO
SABRINA MOLINA RAMOS
CENTER ON RACE, POVERTY & THE
ENVIRONMENT
1012 Jefferson Street,
Delano, CA 93215
Telephone: (661) 720-9140
gorozco@crpe-ej.org
smolina@crpe-ej.org

MARIANA ALVARENGA
JAMIE ZWEIFLER-KATZ
MICHAEL CLAIBORNE
LEADERSHIP COUNSEL FOR JUSTICE
AND ACCOUNTABILITY
2210 San Joaquin St.,
Fresno, CA 93721
Telephone: (559) 369-2790
malvarenga@leadershipcounsel.org
jbkatz@leadershipcounsel.org
mclaiborne@leadershipcounsel.org

June 18, 2026

Table of Contents

I.	INTRODUCTION	3
II.	STANDARD OF REVIEW	5
III.	LEGAL ERRORS	6
	A. The Commission commits legal error when it effectively asserts that the initiation of Phase III never has to happen, thereby not completing clear statutory requirements under 783.5(c).	6
	B. The Commission commits legal error in several of its Findings of Fact and Conclusions of Law.	11
	1. The Commission commits legal error in its Finding of Fact 2 and Conclusion of Law 2; therefore, both determinations must be revised and corrected.....	11
	2. The Commission commits legal error in its Finding of Fact 3; therefore, Finding of Fact 3 must be revised and corrected.....	16
	3. The Commission commits legal error in its Conclusion of Law 1; therefore, Conclusion of Law 1 must be revised and corrected.....	19
	C. The Commission commits legal error by continuing to engage in unreasonable delay in the implementation of Section 783.5(c) and failing to fulfill the commitments it made years ago.....	22
IV.	CONCLUSION.....	27

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

Petition to adopt, amend, or repeal a regulation
pursuant to Pub. Util. Code § 1708.5

P.25-09-009

**CENTER FOR BIOLOGICAL DIVERSITY,
CENTER ON RACE, POVERTY & THE ENVIRONMENT,
CENTRAL CALIFORNIA ASTHMA COLLABORATIVE, AND
LEADERSHIP COUNSEL FOR JUSTICE & ACCOUNTABILITY**

APPLICATION OF THE PETITIONERS FOR REHEARING OF DECISION 26-05-003

Pursuant to Rule 16.1 of the Commission’s Rules of Practice and Procedure, the Center for Biological Diversity, Center on Race, Poverty & the Environment, Central California Asthma Collaborative, and Leadership Counsel for Justice and Accountability (collectively, “Petitioners”) submit this Application for Rehearing of Decision 26-05-003 (“Decision”), issued on May 19, 2026, denying Petitioners’ Petition to Implement Remaining Provisions of Public Utilities Code § 783.5, Phase III of the San Joaquin Valley Proceeding (“Petition”).

Pursuant to Rule 16.1(a) of the Commission’s Rules of Practice and Procedure, this application is timely filed and served within 30 days after the Commission issued the Decision on May 19, 2026.

I. INTRODUCTION

The underlying Petition at issue here asks the Commission to comply with the plain language of AB 2672, which requires the Commission to undertake and complete a vital process to bring affordable energy to disadvantaged communities (“DACs”) in the San Joaquin Valley

(“SJV”).¹ Although the Commission initiated a proceeding to comply with the statute, the agency closed the proceeding without completing the statutory requirements.

In the Decision issued on May 19, 2026, the Commission “denies the Petition to open a rulemaking pursuant to Section 1708.5 of the Public Utilities Code,”² ignoring clear statutory mandates set forth in AB 2672, specifically Public Utilities Code § 783.5(c).³ Section 783.5(c) states that the Commission “shall determine whether any of the options analyzed in the proceeding would increase access to affordable energy in a cost-effective manner,” and for these options, the Commission “shall take appropriate action and determine appropriate funding sources.”⁴ The Commission, however, claims that “[n]o statutory directive or other authority requires the Commission to open a proceeding now.”⁵ By refusing to reopen R.15-03-010 or to open a new rulemaking proceeding for Phase III to take place, the Commission fails to fulfill its statutory obligations under Section 783.5(c).⁶

The Commission commits legal error when it effectively concludes that the initiation of Phase III never has to happen, thereby not completing clear statutory requirements under 783.5(c). The Commission also commits legal error in its proclamation of Finding of Fact 2 and

¹ Sept. 11, 2025, Petition to Implement Remaining Provisions of Public Utilities Code 783.5 (Phase III of the San Joaquin Valley Proceeding).

² D.26-05-003, Decision Denying Petition to Open a Rulemaking to Adopt, Amend, or Repeal a Regulation Pursuant to Public Utilities Code Section 1708.5 (May 19, 2026) at 2.

³ Unless otherwise specified, statutory references hereinafter are to the California Public Utilities Code.

⁴ Pub. Util. Code § 783.5(c).

⁵ D.26-05-003, *supra* note 2 at 2.

⁶ In the Decision, the Commission purports to find that “Petitioners challenge a prior decision, D.20-08-025, and a challenge to a Commission decision on the ground that it is unlawful or erroneous must be made through an application for rehearing under Sections 1731-1736, which Petitioners did not file.” (D.26-05-003, *supra* note 2 at 11). This is not accurate. While the premature closure of R.15-03-010 is symptomatic of the Commission’s legal error, it is not the root of the problem that Petitioners seek to address—failing to comply with the statutory mandate. The notion that Petitioners are too late to raise this issue because there was no application for rehearing is simply irreconcilable with the Decision’s contradictory suggestion that it is too “premature” to raise these concerns while other issues are still under consideration.

Conclusion of Law 2, Finding of Fact 3, and Conclusion of Law 1; therefore, the Decision must be corrected to avoid statutory noncompliance. Lastly, the Commission commits legal error by continuing to engage in unreasonable delay in the implementation of Section 783.5(c) and failing to fulfill the commitments it made years ago.

To address these legal errors, the Commission must grant Petitioners' application for rehearing and revise its decision to comply with Section 783.5's legal requirements.

II. STANDARD OF REVIEW

Rule 16.1(c) requires an application for rehearing to “set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous.”⁷ An application for rehearing “alert[s] the Commission to a legal error, so that the Commission may correct it expeditiously.”⁸

Following the Legislature's expansive revision of multiple laws to broaden judicial review of Commission decisions,⁹ and the landmark decision in *Ctr. for Biological Diversity, Inc. v. Pub. Utils. Comm'n*,¹⁰ the standard of review for Commission decisions is no longer based on whether it “fail[ed] to bear a reasonable relation to statutory purposes and language.”¹¹ Here, rather than affording the Commission a “uniquely deferential standard of review,”¹² a court will now perform its judicial duty and apply “its independent judgment de novo to the merits of the legal issue before it.”¹³ Courts are the final arbiters of statutory interpretation, and they now owe

⁷ California Public Utilities Commission (“CPUC” or “Commission”), Rules of Practice and Procedure, Rule 16.1; *see also* Cal. Code Regs., tit. 20, § 16.1(c).

⁸ Cal. Code Regs., tit. 20, § 16.1(c).

⁹ *See Ctr. for Biological Diversity, Inc. v. Pub. Utils. Comm'n* (2025) 18 Cal.5th 293.

¹⁰ *See id.*

¹¹ *Id.* at 299 (quoting *Greyhound Lines, Inc. v. Pub. Utils. Comm'n* (1968) 68 Cal.2d 406, 410–411).

¹² *Ctr. for Biological Diversity, Inc. v. Pub. Utils. Comm'n* (2025) 18 Cal.5th 293, 300 (citation omitted).

¹³ *Id.* at 305 (citation omitted).

less deference to the Commission’s interpretation of its statutory mandates.¹⁴ As such, it is essential that the Commission adhere closely to the text of the controlling statute because a reviewing court will no longer defer to unwarranted deviations.

Pursuant to Section 1757, legal errors the Commission must correct expeditiously include, *inter alia*, where “[t]he commission has not proceeded in the manner required by law,” where its “decision . . . is not supported by the findings,” where the “findings . . . are not supported by substantial evidence in light of the whole record,” or where the decision “was an abuse of discretion.”¹⁵

III. LEGAL ERRORS

A. **The Commission commits legal error when it effectively concludes that the initiation of Phase III never has to happen, thereby not completing clear statutory requirements under 783.5(c).**

The Legislature used precise and unambiguous language in Section 783.5(c) that a reasonable reader would understand to be mandatory and nondiscretionary. The text sets forth clear expectations for the Commission to fulfill: “The commission *shall* determine whether any of the options analyzed in the proceeding would increase access to affordable energy in a cost-effective manner. For these options, the commission *shall* take appropriate action and determine appropriate funding sources.”¹⁶ By refusing to reopen the SJV proceeding or to open a new proceeding to complete these clear statutory requirements,¹⁷ the Commission fails to satisfy the full mandate of Section 783.5 and frustrates the broader legislative purpose that underpins the statute.

¹⁴ *See id.* at 303 (citation omitted).

¹⁵ Pub. Util. Code § 1757(a).

¹⁶ § 783.5(c), *supra* note 4 (emphasis added).

¹⁷ D.26-05-003, *supra* note 2 at 11.

Applying the ordinary meaning of Section 783.5(c), the Commission must consider how the word “shall” is understood in common parlance. The word “shall” is defined in Section 14 of the California Public Utilities Code, which is intended to inform the Commission on how to interpret the word in its everyday proceedings. Section 14 plainly states, “‘Shall’ is mandatory and ‘may’ is permissive.”¹⁸

Ignoring this definition, in its Decision the Commission states that, in D.18-12-015, it had an “intention” to hold a Phase III and that its “intention” to act was consequently discretionary.¹⁹ But whether or not the Commission intended to initiate Phase III is ultimately irrelevant, because the Legislature’s statutory commands control, not the Commission’s “intention.” By including the word “shall” twice in Section 783.5(c), which is compulsory in nature, the Legislature removed the Commission’s discretion, and thus its intent bears no weight here.

In addition to its statutory obligations under Section 783.5(c), the Commission must promptly initiate Phase III so that an open and transparent discussion regarding the cost-effectiveness of individual pilot components can finally take place in a public forum. Section 783.5 directs the Commission to “analyze the economic feasibility” of various alternatives to increase affordable energy access in SJV DACs and determine whether one, or several, of these options “would increase access to affordable energy in a cost-effective manner.”²⁰ Following this mandate, the Commission previously determined it must “assess the economic feasibility of extending affordable clean energy options to all SJV DACs identified in Phase III.”²¹

¹⁸ Pub. Util. Code § 14.

¹⁹ D.26-05-003, *supra* note 2 at 15.

²⁰ Pub. Util. Code § 783.5.

²¹ D.18-12-015, Decision Approving San Joaquin Valley Disadvantaged Communities Pilot Projects (December 13, 2018) at 151, Finding of Fact 8.

The relief Petitioners request here is modest. Petitioners simply request that the Commission carry out its statutory duties by determining, first, whether to expand one or more of the pilot components to the remaining SJV DACs, and second, whether to continue elements of the pilots for the initial pilot communities. Petitioners simply request that the Commission examine “whether *any* of the options”²² from the pilot projects are cost-effective.

The Commission “shall take appropriate action and determine appropriate funding sources” when deciding which components to expand and/or continue.²³ Petitioners only request that, as required by the statute, the Commission develop the required economic feasibility analysis of the pilot program, determine which aspects of the pilot program should be extended to the remaining SJV DACs, and address Phase II implementation issues.

Several programs are particularly well-suited to replicate in other SJV DACs.

For example, one of the pilot components the Commission should examine individually is the cost-effectiveness of the Community Energy Navigators (“CENs”) program. CENs are individuals affiliated with local community-based organizations or who serve as trusted community leaders to inform, engage, and assist participating residents. They conduct outreach to educate San Joaquin Valley residents, assist households in achieving energy cost savings, and provide guidance to those navigating pilot participation. Their responsibilities include community outreach, technical assistance, implementing the split incentives program, supporting the remediation process, identifying funding sources, and facilitating pilot communications and reporting.²⁴

²² § 783.5(c), *supra* note 4 (emphasis added).

²³ *Id.*

²⁴ Self-Help Enterprises, SJV DAC Pilot Projects Community Energy Navigator Program Manager: *Community Outreach & Engagement Plan* (PowerPoint) (n.d.), <https://liob.cpuc.ca.gov/wp-content/uploads/sites/14/2020/12/Item-06.-Self-Help-Enterprises-Presentation-on-San-Joaquin-Valley-Proceeding-LIOB121019.pptx>.

The Commission has previously identified the many benefits of the CEN program, in particular how tailored and in-person outreach in partnership with community-based organizations was responsible for the vast majority of pilot project participation (enrolling 731 customers, as compared to the only 13 enrolled under more traditional IOU outreach efforts).²⁵ Beyond assisting SJV DACs in navigating the complex field of energy options, the CENs were implemented to allow for “more diverse pilot learnings and data” that was planned to be utilized “in Phase III of the proceeding.”²⁶

In addition to the CENs, the Commission should also individually examine the cost-effectiveness of the bill savings mechanism that was established by Decision 18-12-015 and subsequently Resolution E-5034. The bill savings mechanism was a critical component designed to ensure affordability, particularly for low-income residents transitioning from propane or wood-burning appliances to electric options. The mechanism provided a 20% discount, supplemented by the CARE discount for low-income households, to help ensure that participants experienced actual energy cost savings.²⁷ This 20% discount applied to all electrification pilot participants on their monthly electricity bills for a five-year period after the first electric appliance was installed in their home.

Following a finding in December 2024 that some participants experienced energy cost increases, the discount was extended for an additional five years.²⁸ Given that implementation

²⁵ Evergreen Economics, PG&E and RHA San Joaquin Valley Pilot Impact Evaluation (Dec. 9, 2024) at 49; *see also* Common Spark Consulting, *San Joaquin Valley Affordable Energy Pilots — Community Findings Memo* (Apr. 2024) at 8.

²⁶ D.18-12-015, *supra* note 21 at 156, Finding of Fact 49.

²⁷ Resolution E-5034, Resolution Authorizing Bill Protection Mechanisms for San Joaquin Valley Pilot Participants Pursuant to Decision 18-12-015 (December 19, 2019), at 46–50, *available at* <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M319/K277/319277495.PDF>.

²⁸ *Id.* at 48, Order 3; Pacific Gas & Electric Company, Advice Letter Pursuant to Ordering Paragraph 5 of Resolution E-5034 Authorizing Bill Protection Approaches for Pacific Gas and Electric Company,

began several years ago, the expiration of this necessary and protective bill savings mechanism now appears imminent, raising urgent questions about continued energy affordability for participating SJV DAC residents.²⁹

The bill protection mechanism was not intended to be eliminated outright absent a showing that all pilot participants were experiencing cost savings.³⁰ Protecting pilot residents from rising costs through the bill protection mechanism and evaluating whether the mechanism can successfully achieve pilot goals was a central purpose of the pilot program, as articulated in the Commission’s prior decisions. This dual purpose was designed to inform whether and how such a mechanism could be expanded more broadly to fulfil the goals of Section 783.5. Accordingly, eliminating bill protection, particularly without evidence that all participants are realizing energy cost savings, directly contradicts the Commission’s findings and undermines the pilot’s core objectives. Given that affordable energy access is at the core of Section 783.5, and bill savings are critical to achieving that objective, the Commission should prioritize replicating the bill savings mechanism.

By refusing to satisfy the full mandate of Section 783.5 and ignoring the well-established compulsory nature of the word “shall” in construing legislative intent, the Commission commits reversible legal error. Additionally, the Commission commits reversible legal error by failing to consider in an open proceeding individual pilot options, such as CENs and the bill savings mechanism, that would increase access to affordable energy in a cost-effective manner, which is mandated by Section 783.5(c).

Southern California Edison Company, and Southern California Gas Company San Joaquin (December 10, 2024), available at https://www.pge.com/tariffs/assets/pdf/adviceletter/GAS_5010-G.pdf.

²⁹ The bill savings mechanism is currently set to expire in 2029.

³⁰ Resolution E-5034, *supra* note 27 at 47, Finding 30 (“It is reasonable to step down a percentage bill protection discount over time, assuming that all participants are experiencing cost savings.”).

B. The Commission commits legal error in several of its Findings of Fact and Conclusions of Law.

1. The Commission commits legal error in its Finding of Fact 2 and Conclusion of Law 2; therefore, both determinations must be revised and corrected.

In Finding of Fact 2, the Commission erroneously states, “Section 783.5 has no deadline to complete implementation of the matters in subsection (c) and the deadline found in subsection (b) does not apply.”³¹ Similarly, in Conclusion of Law 2, the Commission erroneously states, “Beyond the deadline in Section 783.5(b), no requirement in Section 783.5 exists for the Commission to act now or by any other deadline to open another phase of R.15-03-010 or otherwise initiate new proceeding on matters in Section 783.5.”³²

The Commission relies on the detail that Section 783.5(c) does not state an exact deadline for the initiation and completion of Phase III as supporting evidence for its denial of the Petition,³³ but the lack of a specific deadline does not mean that the initiation of Phase III *never* has to happen. By closing the proceeding and refusing to reopen it or to open a new proceeding, the Commission contravenes clear legislative intent for Phase III to be completed in a timely and transparent manner with public input.³⁴ The Commission’s determination that Phase III does not need to happen because there is no explicit deadline is both illogical and unjustified. To imply that the Commission (or any California state agency for that matter) need not comply with a statutory mandate unless there are step-by-step directives to guide the Commission throughout

³¹ D.26-05-003, *supra* note 2 at 19, Finding of Fact 2.

³² *Id.* at 20, Conclusion of Law 2.

³³ *See* D.26-05-003, *supra* note 2 at 12.

³⁴ R.15-03-010, Phase II Scoping Memorandum and Ruling (December 6, 2017) at 3, *available at* <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M199/K979/199979978.pdf>. (“Phase III of this proceeding will be opened at a later date to a) evaluate progress with implementation of the authorized Pilot Projects; and b) review the data collected pursuant to an approved Data Gathering Plan created in Phase II. Phase III, will also utilize data collected in accordance with the approved Data Gathering Plan and evaluation of pilot projects to conduct the economic feasibility study required by AB 2672.”)

the implementation process completely flouts the administrative rules and procedures of the state and is a usurpation of legislative power.³⁵

Even in the absence of a precise statutory deadline (which is not required when there is a clear statutory mandate), the Commission still committed itself to a procedural schedule for Phase III in the SJV Proceeding.³⁶ That schedule became specific once SCE retained a technical consultant, which occurred on September 25, 2025, *subsequent to* the initial filing of the Petition.³⁷ By issuing this Decision, the Commission is now allowing PG&E and SCE to depart from the procedural schedule provided in R.15-03-010.³⁸ For example, PG&E suggested in their response rescinding the need to move forward with Phase III, and because of this Decision, the utility may erroneously conclude that it now has the discretion to not follow Section 783.5(c) at all.³⁹

Phase III includes the evaluation of the pilot projects authorized by D.18-12-056.⁴⁰ An adequate evaluation of the pilots, however, is necessarily contingent on both the adequate development and eventual conclusions of the Economic Feasibility Framework (“EFF”). While PG&E and SCE seem to agree to assess the *conclusions* of the EFF upon initiation of Phase III,⁴¹

³⁵ See generally *Morris v. Harper* (2001) 94 Cal.App.4th 52, 60 (After an agency failed to comply with a statutory mandate for several years, the court wrote that “the lack of any justifiable reason for the protracted delay is, at best, gross indifference to, if not outright defiance of, the mandates of the Legislature and the judiciary”).

³⁶ D.18-12-015, *supra* note 21 at 139–41.

³⁷ *Id.* at 140 (“Commission staff should endeavor to make a draft of its proposal available within four months after the contract with the consultant begins”).

³⁸ *Id.* at 139–41.

³⁹ PG&E Response to Petition at 4 (citing Public Utilities Code § 1708 regarding the Commission’s authority to “rescind, alter or amend any order or decision”).

⁴⁰ R.15-03-010, Phase II Scoping Memorandum and Ruling, *supra* note 34 at 3.

⁴¹ See PG&E Response to Petition at 4 (“Once the Economic Feasibility Framework is complete, then the Commission *may* decide to open Phase III.” (emphasis added)). SCE Response to Petition at 7 (“the most appropriate time to begin an analysis of alternatives is once the EFF is *complete or near complete*.” (emphasis added)).

development of that framework is required in Phase III—an open proceeding. D.18-12-015 details the requisite timeline:

1. “We direct SCE to issue an RFP for a contract with an expert technical entity to develop recommendations related to an Economic Feasibility Framework for this proceeding.”⁴² (SCE issued an RFP for this technical entity on December 20, 2024.)⁴³
2. “Energy Division staff will draft the Scope of Work and substantively oversee the contract.”⁴⁴
3. “Division staff will serve a proposed Scope of Work to the service list of R.15-03-010 and consider informal party input prior to releasing an RFP.”⁴⁵ (This occurred on September 21, 2023).⁴⁶
4. “Commission staff should work with the contracted technical expert to develop a white paper/straw proposal.”⁴⁷
5. “*Commission staff should endeavor to make a draft of its proposal available within four months after the contract with the consultant begins.*”⁴⁸
6. “The draft proposal will be served on the service list for this proceeding, and additional proceedings that may have overlapping interests and Commission Energy Division staff or the consultant will convene one or more informal workshop(s) to obtain *party input*. As part of developing the draft proposal, Commission Energy Division staff may *informally consult* with interested parties.”⁴⁹
7. “*Phase III of this proceeding will then formally consider and take comment on the White Paper/Straw Proposal and convene additional workshops as needed.*”⁵⁰

⁴² D.18-12-015, *supra* note 21 at 139.

⁴³ SCE RFP Team Email to R.15-03-010 Service List, Notification of Upcoming Release of an RFP for a San Joaquin Valley Affordable Energy Proceeding Economic Feasibility Framework Technical Expert (December 20, 2024).

⁴⁴ D.18-12-015, *supra* note 21 at 139.

⁴⁵ *Id.*

⁴⁶ Energy Division Email, “R.15-03-010: Opportunity to Provide Input on a Draft Scope of Work for an Economic Feasibility Framework Technical Consultant,” (September 21, 2023).

⁴⁷ D.18-12-015, *supra* note 21 at 139.

⁴⁸ *Id.* at 140 (emphasis added).

⁴⁹ *Id.* (emphasis added).

⁵⁰ *Id.* at 140–41 (emphasis added).

The denial of the Petition risks having PG&E and SCE depart from this clear procedural schedule—required by D.18-12-015—and for the expert technical entity, Verdant, to essentially complete its work at its own preferred pace and methodologies outside of a formal proceeding.

Phase III, however, should begin at Step 6 above, when the draft EFF *proposal* is served on *parties*. Certainly, there can be no “parties” without an active and open proceeding.⁵¹ The Commission’s decision essentially allows PG&E and SCE to interpret D.18-12-015 as only requiring the latter part of Step 6, with informal consultation of *interested parties*.⁵² This is insufficient to meet the requirements of D.18-12-015 and ignores Step 7.

Step 7 is clear. Drawing from party or informal comments on a draft *proposal* for the EFF, Phase III will then determine whether the proposal for the EFF is adequate, allow the technical consultant to proceed with its work, and *then* complete the work. This makes sense because, as SCE identified, achieving consensus on the draft proposal for the EFF was difficult even in 2018 when R.15-03-010 remained open.⁵³ A central theme of contention during the efforts to develop the EFF in Phase II revolved around the suitability of existing Commission cost-effectiveness tests. Yet to then expect consensus in an informal setting is wholly inadequate. Furthermore, the ESJ Action Plan certainly documents the need to “reconsider traditional cost-effectiveness measures . . . [and] [u]nderstand how investments benefit ESJ communities.”⁵⁴ Step 7 is critical, and contrary to PG&E and SCE’s contentions, must occur in Phase III.

⁵¹ See e.g. CPUC Rules of Practice and Procedure 1.4(a) (detailing how “any person can become a party to a proceeding”); 1.4(c) (“The assigned Administrative Law Judge may, where circumstances warrant, deny party status or limit the degree to which a party may participate in the proceeding”); 8.1(d) (“Party” includes any Commission staff assigned to a proceeding).

⁵² See *id.*, Rule 8.1(d) (defining “interested” as opposed to “party” as detailed in the footnote above).

⁵³ SCE Response to Petition at 6 (“In 2018, stakeholders tried and failed to develop a consensus framework”).

⁵⁴ ESJ Action Plan, Version 2 at 53.

Moreover, PG&E and SCE’s responses to the Petition demonstrate the dangers of the Commission’s Decision. Their responses to the Petition do not give Petitioners any confidence that the Utilities seek to faithfully comply with D.18-12-015. By seeking the completion of the EFF without the reinitiation of the proceeding, it seems as if the Utilities also seek to predetermine the outcome of Phase III by avoiding the guidance of the ESJ Action Plan and locking in a determination with existing, outdated, and inadequate cost-effectiveness tests that were never designed to capture the full suite of benefits of programs targeting DACs.

In addition, by seeking to truncate opportunities for adequate and meaningful participation—or even eliminate Phase III entirely—the Utilities’ responses themselves do not offer any guarantees that a closed proceeding will ensure adequate participation.⁵⁵ For instance, SCE stated that “[t]his [EFF] work is *expected to be* transparent to the public and will involve significant public input.”⁵⁶ But in a closed proceeding, where there is necessarily no *guarantee* of transparency, informal interviews are insufficient and will not obtain “significant public input.” To truly achieve significant public input,⁵⁷ the Commission should rehear Decision 26-05-003 and initiate Phase III in a public proceeding.

The Commission commits reversible legal error by claiming it does not have to comply with a clear statutory mandate, relying on the fact that Section 783.5(c) does not include a

⁵⁵ See PG&E Response to Petition at 4 (“Once the Economic Feasibility Framework is complete, then the Commission *may* decide to open Phase III.” (emphasis added)); SCE Response to Petition at 7 (“[T]he most appropriate time to begin an analysis of alternatives is once the EFF is *complete or near complete*.” (emphasis added)).

⁵⁶ SCE Response to Petition at 4 (emphasis added).

⁵⁷ Intervenor compensation remains one of the primary vehicles for ESJ communities to participate in Commission proceedings, but is not available in a closed proceeding, or informal settings outside of a proceeding. The Commission seems to agree, as informal workshops and interviews with interested entities only form a small part of the initial development of how the EFF technical consultant proceeds with its work.

precise deadline.⁵⁸ The Commission also commits reversible legal error by failing to follow the procedural schedule it created for Phase III in D.18-12-015.⁵⁹ Petitioners request that Finding of Fact 2 and Conclusion of Law 2 be revised and corrected to read as follows:

Finding of Fact 2: Section 783.5 has ~~no~~ a deadline to complete implementation of the matters in subsection (c) ~~and the deadline found in subsection (b) does not apply.~~

Conclusion of Law 2: ~~Beyond the deadline in Section 783.5(b), no~~ **There is a requirement in Section 783.5 exists for the Commission to act now, and or by any other deadline to the Commission must** open another phase of R.15-03-010 or otherwise initiate new proceeding on matters in Section 783.5, **following the procedural schedule it created for Phase III in R.15-03-010.**

2. The Commission commits legal error in its Finding of Fact 3; therefore, Finding of Fact 3 must be revised and corrected.

In Finding of Fact 3, the Commission erroneously states, “A phase III was not a ‘scoped issue’ in the *Assigned Commissioner’s Scoping Memorandum and Ruling for Phase II* (December 6, 2017) in R.15-03-010.”⁶⁰

Contrary to Finding of Fact 3, Phase III was included in the Assigned Commissioner’s Scoping Memorandum and Ruling for Phase II (“Scoping Memo”) as a scoped issue, and as such, the Commission is required to follow through on that scope and may not disregard Phase III without adhering to proper procedural steps. As scoped in the Scoping Memo, Phase III of the SJV Proceeding must implement the remainder of Public Utilities Code § 783.5(c):

Phase III of this proceeding will be opened at a later date to a) evaluate progress with implementation of the authorized Pilot Projects; and b) review the data collected pursuant to an approved Data Gathering Plan created in Phase II. Phase III, will also utilize data collected in accordance with the approved Data Gathering Plan and evaluation of pilot projects to conduct the economic feasibility study required by AB 2672.⁶¹

⁵⁸ See D.26-05-003, *supra* note 2 at 19, Finding of Fact 2.

⁵⁹ See *id.* at 20, Conclusion of Law 2.

⁶⁰ D.26-05-003, *supra* note 2 at 19, Finding of Fact 3.

⁶¹ R.15-03-010, Phase II Scoping Memorandum and Ruling, *supra* note 34 at 3.

The Scoping Memo put parties on notice that, as part of Phase III, the Commission would conduct an economic feasibility study to determine whether to expand the pilots.⁶² The notice, however, was inadequate because it did not fairly inform parties that the scope of the SJV proceeding would include the Commission eventually electing to end the pilot projects without evaluation or party comment. Petitioners and other interested parties did not receive fair notice that Phase III would potentially never happen, especially because the Scoping Memo stated that “[a] separate scoping memorandum will be issued for Phase III,” which Petitioners are still waiting for.⁶³ The fact that the Commission has not yet issued this separate scoping memorandum for Phase III does not mean that Phase III was not a “scoped issue.” As described above, the Phase II Scoping Memo included the material components of Phase III, putting parties on notice of the inclusion of these issues in the Proceeding. So, either the Commission did not give fair notice in the Scoping Memo—as evidenced by the misleading information provided throughout the memo—or the Commission simply did not follow through on all the scoped issues, Phase III being one of them. Regardless, the procedural issues and unresolved commitments in the Scoping Memo must be addressed by the Commission, whether it be through reopening the proceeding or opening a new proceeding.

The purpose of a pilot project is to serve as a preliminary trial that is designed to test the potential benefits and costs of a proposed project before replicating that project on a much larger scale; therefore, Phase II and Phase III are intrinsically linked and fundamentally dependent on the success of one another. Interested parties and pilot participants could not have reasonably foreseen Phase III never coming to fruition.

⁶² *See id.* at 3, 8.

⁶³ *Id.* at 13.

The Commission’s failure to implement Phase III affects both pilot and non-pilot communities in the San Joaquin Valley alike. First, several pilot participants joined not only in hopes of near-term benefits, but also because they understood their participation as a contribution to a broader process in which any hurdles they faced could help identify and resolve barriers for other SJV DACs in future implementation of the statute. Second, Section 783.5 was not enacted merely for the benefit of pilot participants; the statute mandates affordable energy solutions for potentially *all* SJV DACs. While the pilots provided affordable energy options for ten SJV DACs, the vast majority of eligible SJV DACs have not been reached. Many qualifying communities declined to participate or were not selected in the pilot phase for various reasons, including structural limitations and pilot design constraints.⁶⁴ Some may have reasonably assumed that further opportunities would arise through subsequent implementation phases. 93 percent of identified eligible SJV DACs still await the Commission’s full implementation of Section 783.5.⁶⁵

The Commission commits reversible legal error by claiming that Phase III was not a scoped issue in the Phase II Scoping Memo and by not fulfilling the legal requirements of the Scoping Memo. Petitioners request that Finding of Fact 3 be revised and corrected to read as follows:

Finding of Fact 3: A [P]hase III was ~~not~~ a “scoped issue” in the *Assigned Commissioner’s Scoping Memorandum and Ruling for Phase II* (December 6, 2017) in R.15-03-010.

⁶⁴ For instance, the community of Monterey Park Tract was “deferred for further consideration in Phase III of this proceeding.” D.18-12-015, *supra* note 21 at 2.

⁶⁵ While other Commission proceedings may offer these communities ancillary benefits, they are not designed to fulfill the specific statutory mandate of Section 783.5. Other proceedings are not targeted at the San Joaquin Valley DACs identified in the SJV proceeding. The Commission is still required to comply with Section 783.5, which mandates action for these communities specifically.

3. The Commission commits legal error in its Conclusion of Law 1; therefore, Conclusion of Law 1 must be revised and corrected.

In Conclusion of Law 1, the Commission erroneously states, “No legal requirement exists for the Commission to open another phase of R.15-03-010.”⁶⁶

The vague nature of Conclusion of Law 1 suggests two possible legal errors: 1) that the Commission still believes that it legally never has to commence Phase III, which was already rebutted in Part III.A,⁶⁷ or 2) that the Commission believes Phase III need not be done in R.15-03-010 and could alternatively be done in Rulemaking 19-01-011—the Building Decarbonization (“BD”) proceeding.⁶⁸ Both of these presumptions are erroneous and provide no basis for this Conclusion of Law.

The Commission’s BD proceeding is not the appropriate place to address the issues intended for Phase III. The BD proceeding is, first, a statewide-focused effort that, second, targets “both actions to reduce the emissions and impacts from natural gas use in buildings, as well as to electrify certain building end uses.”⁶⁹ Neither of these lenses is suitable to adequately address affordable clean energy solutions in SJV DACs.

The Legislature specifically passed AB 2672 as a special law on account of “the *unique* circumstance that the San Joaquin Valley is home to many communities that *lack access to natural gas service* and it is *necessary to ensure more affordable and cleaner alternatives* are available.”⁷⁰ SJV DACs are in a different position than most residential building decarbonization opportunities because they lack access to natural gas: “Gas lines simply do not extend into their

⁶⁶ D.26-05-003, *supra* note 2 at 20, Conclusion of Law 1.

⁶⁷ *See supra* III.A.

⁶⁸ *See* R.19-01-011, Order Instituting Rulemaking Regarding Building Decarbonization (February 8, 2019) at 3–4, *available at* <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M264/K629/264629773.pdf>.

⁶⁹ *Id.* at 3–4.

⁷⁰ AB 2672 (Perea, 2014), Sec. 3 (emphasis added).

communities and they must choose among more costly, less convenient and more potentially hazardous fuels to heat their homes, their water, and their food.”⁷¹ In addition to being disconnected to natural gas infrastructure, “[i]n the Central Valley, where temperatures can reach extremes, it may be difficult for low-income families to afford the high usage of electricity to adequately heat or cool their homes and provide hot water.”⁷²

Furthermore, the BD proceeding is intended to align with building decarbonization efforts detailed in the California Air Resources Board’s (“CARB”) Scoping Plan.⁷³ CARB’s 2022 Scoping Plan, however, does not address propane use, nor does it suggest any meaningful solutions for reducing residential wood burning.⁷⁴ In fact, the BD Appendix to CARB’s 2022 Scoping Plan even identifies the need for “special consideration” of SJV DAC circumstances, referencing the Commission’s responsibility to determine that special consideration in the SJV Proceeding itself.⁷⁵ The Appendix explicitly states:

[S]ome rural and tribal areas within California are not connected to the State’s electric grid—nor fossil gas infrastructure—but rely instead on propane and wood burning. These communities need special consideration to ensure they still benefit from building decarbonization efforts. For example, CPUC’s San Joaquin Valley Affordable Energy pilot project focuses specifically on ensuring vulnerable communities are not negatively impacted.⁷⁶

⁷¹ AB 2672, Senate Energy Utilities and Communications Committee Analysis (June 23, 2014) at 2, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB2672#.

⁷² AB 2672, Assembly Committee on Utilities and Commerce Analysis (April 7, 2014) at 3, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB2672#.

⁷³ R.19-01-011, *supra* note 68 at 3 (The Commission “currently oversees a wide range of programs and activities to decarbonize California’s electricity and natural gas systems *in a manner consistent with the Scoping Plan.*” (emphasis added)).

⁷⁴ See CARB 2022 Scoping Plan (December 2022) at 60 (“The black carbon inventory [that includes residential wood burning] is not part of California’s GHG Inventory that tracks progress toward the state’s climate targets under AB 32 or SB 32.” The 2022 Scoping Plan does not directly mention propane.)

⁷⁵ CARB 2022 Scoping Plan, Appendix F, Building Decarbonization (November 2022) at 15, available at <https://ww2.arb.ca.gov/sites/default/files/2022-11/2022-sp-appendix-f-building-decarbonization.pdf>.

⁷⁶ *Id.*

To truly align with CARB’s Scoping Plan, the Commission must give SJV DACs special consideration, and the only way to adequately do so is by initiating Phase III in accordance with Section 783.5(c).

While the BD proceeding efforts may be complementary to the goals of the SJV Proceeding, D.18-12-015 determined that two programs, BUILD and TECH “may *contribute* to the *feasibility* of providing affordable clean energy options to the remaining SJV DAC listed communities in Phase III of the proceeding.”⁷⁷ That inquiry rests on the cost-effectiveness determination, but it does not address the other outstanding issues presented by Section 783.5(c), detailed throughout the Petition, that the Commission has yet to address.

In SCE’s response to the Petition, they, too, erroneously claimed that the BD proceeding “*could* be an appropriate forum to discuss” pilot program issues that rightfully should be addressed during Phase III.⁷⁸ Even assuming SCE is not trying to evade its responsibilities as a Pilot Administrator by suggesting Phase III could be resolved in an entirely separate proceeding, this “alternative” is still far too attenuated and does not afford the SJV DACs the special consideration they require. Petitioners strongly urge the Commission to recognize that the suggested proceeding hopping offered by SCE will only make it more likely that these SJV DACs will fall through the cracks and never receive the support they were guaranteed by Section 783.5(c).

The Commission commits reversible legal error by declining to reopen the SJV Proceeding and suggesting Phase III be haphazardly handed off to other forums. Petitioners request that Conclusion of Law 1 be revised and corrected to read as follows:

Conclusion of Law 1: ~~No~~ **A** legal requirement exists for the Commission to open another phase of R.15-03-010.

⁷⁷ D.18-12-015, *supra* note 21 at 130 (emphasis added).

⁷⁸ SCE Response to Petition at 14 (emphasis added).

C. The Commission commits legal error by continuing to engage in unreasonable delay in the implementation of Section 783.5(c) and failing to fulfill the commitments it made years ago.

It is well-recognized that “an administrative agency has no discretion to engage in unjustified, unreasonable delay in the implementation of statutory commands.”⁷⁹ For example, in *California Trout, Inc. v. Superior Court*, pursuant to Fish & Game Code Section 5937, the State Water Resources Control Board (“Water Board”) was required to attach certain conditions to licenses it issued to the Department of Water & Power of the City of Los Angeles (“LA Water & Power”), as mandated by Section 5946.⁸⁰ Under those conditions, LA Water & Power was required to “release sufficient water from its dams into the streams to reestablish and maintain the fisheries which existed in them prior to its diversion of water.”⁸¹

The Water Board, however, failed to immediately attach the Section 5946 conditions to the licenses it issued.⁸² Addressing a challenge to this failure to comply with a statutory command, the court stated that Section 5946 cannot be ignored for several years as the Water Board waits for streamflow rate studies to become available and other events to eventually unfold.⁸³ Rather, the court made clear that an agency “cannot ignore the ongoing violation of a statutory mandate on the ground that the violation will eventually be halted by untimely administrative action.”⁸⁴

That reasoning squarely applies here. The Commission is unequivocally mandated by Section 783.5(c) to “determine whether any of the options analyzed in the proceeding would

⁷⁹ *California Trout, Inc. v. Superior Court* (1990) 218 Cal.App.3d 187, 203.

⁸⁰ *Id.* at 194.

⁸¹ *Id.*

⁸² *See id.* at 194–200.

⁸³ *See id.* at 209.

⁸⁴ *Id.* at 203.

increase access to affordable energy in a cost-effective manner,” and after considering those options, “the commission shall take appropriate action and determine appropriate funding sources.”⁸⁵ Like the language in Section 5946 and 5937, the language in Section 783.5(c) also includes general but clearly mandatory commands for the Commission to follow.

Furthermore, neither Section 5946 nor Section 5937 at issue in *California Trout, Inc.*, included any specific deadlines for the Water Board or LA Water & Power to follow, as is also the case for Section 783.5(c). In short, the Commission’s main argument here—*i.e.*, that the lack of a specific deadline in Section 783.5(c) somehow relieves the agency of its statutory responsibilities—is fundamentally incompatible with the court’s ruling in *California Trout, Inc.*, which makes clear that an agency must comply with a statutory mandate regardless of whether the controlling statute includes a specific deadline.⁸⁶

California Trout, Inc. also provides a helpful test for determining when agency delay becomes unreasonable.⁸⁷ First, the court must consider the context surrounding the delay and whether there is a persuasive reason for the agency delay.⁸⁸ If the court finds no persuasive reason for the delay, “the amount of time reasonably required for compliance with the duty thus imposed depends upon the harm resulting from the delay and the importance of the values served

⁸⁵ § 783.5(c), *supra* note 4.

⁸⁶ See D.26-05-003, *supra* note 2 at 12.

⁸⁷ See also, *e.g.*, *Telecommunications Research & Action Center v. FCC* (D.C. Cir. 1984) 750 F.2d 70, 79–80 (providing a six-factor balancing test for determining whether an agency’s delay is unreasonable: 1) “the time agencies take to make decisions must be governed by a ‘rule of reason[]’”; 2) “where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason”; 3) “delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake”; 4) “the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority”; 5) “the court should also take into account the nature and extent of the interests prejudiced by delay”; and 6) “the court need not ‘find any impropriety lurking behind agency lassitude in order to hold that agency action is ‘unreasonably delayed’” (citations omitted)).

⁸⁸ *California Trout, Inc.*, 218 Cal.App.3d at 204–05.

by delay.”⁸⁹ Essentially, the appropriate amount of time for the delay is determined by balancing the potential harms and values/justifications associated with the wait. Ultimately, “[i]f the proposed delay is unreasonable because it is unwarranted by [the agency’s justifications] it cannot be condoned on the theory that it lies within the discretion of the [agency].”⁹⁰

Here, the Commission must consider the context of the SJV proceeding and statutory requirements under Section 783.5 when determining whether any delay is unreasonable. Particularly given California’s ongoing energy affordability crisis and health concerns in the SJV, there are no justifications for agency delay in initiating Phase III.

Then, the Commission must balance the harms and values associated with the delay to determine “the amount of time reasonably required for compliance with the duty.”⁹¹ There are no justifications for the Commission’s failure to initiate Phase III in a public proceeding. Phase II was completed well over 7 years ago; even using the more generous procedural schedule for Phase III from D.18-12-015, Verdant is still overdue in submitting the draft EFF proposal.⁹²

In addition to California’s ongoing energy affordability crisis and health concerns in the SJV, Petitioners justifiably fear that if Phase III is not carried out in an open and transparent proceeding, the Commission’s consultant will finish the EFF behind closed doors and outside of the public eye. As discussed above, allowing the cost-effectiveness of the pilot programs to be analyzed in such a private manner increases the risk that the select parties involved in the analysis of the EFF will reach a foregone conclusion that does not prioritize the individuals in the pilot communities. Thus, the concrete harms drastically outweigh any abstract justifications for continuing to put off the implementation of Section 783.5(c) and opening a public proceeding.

⁸⁹ *Id.* at 205.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² D.18-12-015, *supra* note 21 at 140.

The Commission wholly disregards the trust that pilot participants put in the Commission to complete all three phases of the project and the good-faith efforts of pilot communities who took a risk in joining the program at its nascent stage. The Commission’s delay comes at the expense of the health of SJV communities, who continue to have unequal access to reliable electricity, safe drinking water, and affordable utility services.

Melynda Metheney is a prime example of a pilot participant the Commission is failing by continuing to engage in unreasonable delay. In an opinion article published by GV Wire, Metheney shares that she was born and raised in the Central Valley, and after years of seeing her community of West Goshen suffer due to high energy costs, she “took a leap of faith and became a Community Energy Navigator.”⁹³ After switching from propane to community solar, she received a “20% discount from [her] community solar subscription, [and her] bill for [her] family of five dropped by \$300 in the summer months.”⁹⁴ She is a firsthand witness to the success of these pilot projects, and she has “talked to friends and neighbors and heard their concerns — and then seen their gratitude when they benefited from these projects.”⁹⁵ Since becoming a CEN and advocating for her community, she now hopes there will be “workable community solar plus storage and real relief for families like [hers], this time on a much larger scale.”⁹⁶ The Commission’s unjustified and unreasonable delay in the implementation of Section 783.5(c) hurts SJV residents like Metheney, and it will continue to hurt them until Section 783.5(c) is completed in an open proceeding.

⁹³ Melynda Metheney, *Community Solar Will Lower Energy Bills for CA Renters. Why Hasn't Legislature Acted?*, GV WIRE (May 20, 2026), <https://gvwire.com/2026/05/20/community-solar-will-lower-energy-bills-for-ca-renters-why-hasnt-legislature-acted/>.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

The Commission commits reversible legal error by continuing to unreasonably delay the implementation of Section 783.5(c) and failing to fulfill the commitments it made years ago.⁹⁷

⁹⁷ *Cf.*, e.g., *Ctr. for Biological Diversity v. Haaland*, No. 22-69960-CAS-KSx, 2023 WL 3007920 (Apr. 17, 2023) (finding agency must comply with statutory command regardless of the lack of a statutory deadline); *Community Voice v. EPA*, 878 F.3d 779 (9th Cir. 2017) (rejecting agency argument that a statute that only required a proceeding to be initiated relieved the agency of the obligation to complete it in a timely manner).

IV. CONCLUSION

For all the foregoing reasons, Petitioners respectfully request that the Commission grant this application for rehearing.

Dated: June 18, 2026

Respectfully submitted,

_____/s/
ROGER LIN
KATHERINE WHISLER
HOWARD CRYSTAL
CENTER FOR BIOLOGICAL
DIVERSITY
2100 Franklin Street, St. #375
Oakland, CA 94612
Telephone: (510) 844-7100
rlin@biologicaldiversity.org
kwhisler@biologicaldiversity.org
hcrystal@biologicaldiversity.org

_____/s/
SARAH SHARPE
BRIANDA CASTRO
CENTRAL CALIFORNIA ASTHMA
COLLABORATIVE
1939 N. Gateway Blvd. Suite 103
Fresno, CA 93727
Telephone: (559) 272-4874
sarah.sharpe@centralcalasthma.org
brianda.castro@centralcalasthma.org
jenna.roper@centralcalasthma.org

_____/s/
GRECIA OROZCO
CENTER ON RACE, POVERTY & THE
ENVIRONMENT
1012 Jefferson Street,
Delano, CA 93215
Telephone: (661) 720-9140
gorozco@crpe-ej.org
smolina@crpe-ej.org

_____/s/
MARIANA ALVARENGA
JAMIE ZWEIFLER-KATZ
MICHAEL CLAIBORNE
LEADERSHIP COUNSEL FOR JUSTICE
AND ACCOUNTABILITY
2210 San Joaquin St.,
Fresno, CA 93721
Telephone: (559) 369-2790
malvarenga@leadershipcounsel.org
jbkatz@leadershipcounsel.org
mclaiborne@leadershipcounsel.org