



STATE OF CALIFORNIA

GAVIN NEWSOM, Governor **FILED**

PUBLIC UTILITIES COMMISSION

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TO PARTIES OF RECORD IN RULEMAKING 25-02-005:

This is the proposed decision of Administrative Law Judge Jacob Rambo. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's **6/26/2025** Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE
Michelle Cooke
Chief Administrative Law Judge

MLC: smt

Attachment

Decision **PROPOSED DECISION OF ALJ RAMBO** (Mailed 5/23/2025)

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.

Rulemaking 25-02-005

**DECISION ADOPTING CHANGES TO THE CALCULATION OF THE
RESOURCE ADEQUACY MARKET PRICE BENCHMARK**

TABLE OF CONTENTS

<u>Title</u>	<u>Page</u>
DECISION ADOPTING CHANGES TO THE CALCULATION OF THE RESOURCE ADEQUACY MARKET PRICE BENCHMARK	1
Summary	2
1. Background	2
1.1. Factual Background	2
1.2. Procedural Background	7
1.3. Ruling on Testimony	9
1.4. Submission Date	11
2. Jurisdiction	11
3. Issues Before the Commission	11
4. Adopting A Single RA MPB Utilizing Three Years' Transaction Data	12
4.1. The D.18-10-019 RA MPB Calculation Methodology Is Flawed	12
4.2. Party Input On Moving to a Single RA MPB Calculation	16
4.3. A Single RA MPB Utilizing the Existing Local RA Transaction Window Balances the Mark-to-Market Paradigm With the Need for Additional Transaction Data	18
5. Eliminating Non-Market Based and Redundant Transaction Data From the RA MPB Calculation	20
5.1. Affiliate Transactions	21
5.2. Swap Transactions	22
5.3. Sleeve Transactions	23
5.4. Party Comments on Eliminating Affiliate, Swap, and Sleeve Transaction Data	23
5.5. Removing Affiliate, Swap, and Redundant Elements of Sleeve Transactions from the RA MPB Calculation	24
6. The Modifications Adopted Today Shall Apply Beginning With the 2025 Final RA MPB	26
7. Summary of Public Comment	27
8. Procedural Matters	28
9. Comments on Proposed Decision	28
10. Assignment of Proceeding	28
Findings of Fact	28
Conclusions of Law	30
O R D E R	31

DECISION ADOPTING CHANGES TO THE CALCULATION OF THE RESOURCE ADEQUACY MARKET PRICE BENCHMARK

Summary

This decision implements revisions to the methodology the Commission uses when calculating the Resource Adequacy (RA) Market Price Benchmark (MPB) utilized in calculating the Power Charge Indifference Adjustment (PCIA). The Commission is statutorily mandated to ensure that the movement of customers from bundled electric services to unbundled service does not shift costs to customers that remain with the utility or those that depart for Community Choice Aggregator (CCA) or Direct Access (DA) service. The first revision adopts a single RA MPB utilizing the time restriction on transaction data currently applicable to the local RA MPBs. The second revision removes affiliate, swap, and duplicative sleeve transactions from the calculation.

Rulemaking 25-02-005 remains open.

1. Background

1.1. Factual Background

The California Public Utilities Commission (Commission) established the Energy Resource Recovery Account (ERRA) regulatory process in Decision (D.) 02-10-062. D.02-10-062 established the ERRA process to provide recovery of energy procurement costs, including expenses associated with fuel and purchased power, utility retained generation, California Independent System Operator (CAISO) related costs, and costs associated with the residual net short procurement requirements to bundled electric service customers of the three large electric investor-owned utilities (IOUs).¹ ERRA proceedings include costs

¹ Bundled electric service customers refers to customers who receive both energy supply from a single utility. Unbundled customers are those for whom energy is procured by a CCA or DA/ESP and transmission and distribution service through the incumbent electric IOU.

for Resource Adequacy (RA) contracts that the utility must buy to meet its reliability requirements.

Issues related to retail choice among load-serving entities are one of the major areas of consideration in the ERRA process. Retail choice refers to customers' options to receive the electricity commodity service from an entity other than their incumbent electric IOU. All customers, regardless of their choice of provider for the electric commodity service, still use the physical electric grid owned and operated by the IOU. Customers who depart the incumbent utility for a third-party provider receive the electric commodity service from the non-utility entity, but the incumbent electric IOU continues to provide the electric delivery and billing services to the customer.

Since the adoption of Assembly Bill (AB) 117 (2003), Californians have seen an expansion in the number of Community Choice Aggregators (CCAs) formed by local governments to engage directly in serving the electricity demand of their jurisdictions. In addition to the CCAs that serve local load, some customers, typically large commercial and industrial customers, receive their energy supply from electric service providers (ESPs) that provide direct access (DA) service. DA service is a private sector analogue to the customer choice options provided by CCAs.

When a CCA is formed, or a customer receives DA service from an ESP, the ESP or CCA takes over the responsibility to procure electricity to meet the demand of its customers. Customers that continue to receive bundled electric procurement service from the IOU are referred to as bundled customers, while customers that depart for a CCA or ESP are referred to as unbundled customers, since they continue to receive electric delivery service from the IOU.

The incumbent IOU had planned for the unbundled customers' future load, procuring commodities like long-term energy, capacity, and renewables contracts to meet its long-range procurement obligations before the unbundled customers departed from the IOU. When customers depart the IOU to take electric commodity service from a third party, the departed customer has an obligation to cover any residual procurement costs incurred by the incumbent utility on the customers' behalf. The departed customer is also entitled to any residual procurement benefits enjoyed by the incumbent IOU attributable to the departed customer. The Public Utilities Code and existing policy mandate processes and mechanisms that ensure these costs and benefits are retained by the departing customers, promoting fairness and indifference to all customers. These processes are complex, often contentious, and regularly at issue in the utilities' annual ERRA forecast proceedings.

The PCIA is a ratemaking element intended to ensure indifference to all customers, bundled and unbundled, first adopted in D.06-07-030. In the context of PCIA, indifference means that bundled customers do not incur increased costs due to the departure of other customers to unbundled service. They neither gain nor lose from other customers' departure. The PCIA revenue requirement and rates are calculated annually as part of each IOU's ERRA Forecast proceeding. The PCIA implements Public Utilities Code Sections 366.1 and 366.2, 365.28 and 366.39², which require that (1) bundled service IOU customers do not experience any cost increases due to the departure of retail customers, and (2) customers who depart IOU service do not experience any cost increases due to an allocation of costs that were not incurred on their behalf. The PCIA serves as the

² Statutory references are to the Public Utilities Code unless noted otherwise.

mechanism to facilitate cost equity, or indifference, between third-party providers and customers of the incumbent IOU.

D.18-10-019 revised the PCIA to establish the market value of the portfolio by setting Market Price Benchmarks (MPBs) based upon the weighted average price of market transactions for the following market components: energy index price, RA capacity (system, local and flexible), and Renewable Portfolio Standard (RPS) value. The portfolio market value is calculated using the MPBs for energy, based on Platts forward prices, and the MPBs for RA and RPS, which are determined by the Commission's Energy Division³ based upon reported market transaction data from all load-serving entities (LSE) in California. D.18-10-019 also implemented an annual true-up process to reconcile differences between forecasted and actual MPBs and ensure that bundled and departing load customers share equally in the residual procurement costs or benefits of PCIA-eligible resources.

There are three components to RA included in the MPBs: System RA, Local RA, and Flexible RA. Resources that qualify as local RA or flexible RA also qualify for system RA. D.18-10-019 requires that where RA provides compliance for multiple categories, it receives a single categorization for the MPB calculation. RA that provides both system and flexible capacity is counted as flexible capacity. RA that provides system and local capacity is counted as local. D.18-10-019 further limits the timeframe from which RA transactions are considered for RA forecasts: one year for system and flexible RA and three years for local RA.

In order to calculate the RA MPB, Energy Division sends a data request to the IOUs, CCAs, and ESP/DA providers three times a year. The data request

³ References to Energy Division are to the Commission's Advisory Energy Division.

gathers data on all RA transactions. Energy Divisions calculates three MPBs: system MPB, flexible MPB, and one local area MPB each for Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E). The three local MPBs are geographically defined by the transmission access charge (TAC) areas for PG&E, SCE, and SDG&E.

The Commission has observed increasing volatility in the PCIA MPB. According to the 2025 Forecast, system RA values are expected to increase by 827% over 2020 values.⁴ This increase is reflective of a narrow subset of transaction data being applied to the entire portfolio. One of the modifications adopted today will expand the subset of data used to calculate the MPBs by creating a single RA MPB, rather than the type-specific MPBs currently required by D.18-10-019, based upon the existing three-year transaction period currently applicable to local RA.

We also amend the methodology to remove transactions that are not market-based and redundant transaction data from the calculation. The Commission's Energy Division has identified a number of transactions in the four quarters ending September 30, 2024, that did not reflect market-based pricing. Some involved transactions between affiliated corporate entities or subsidiaries, wherein the cost and benefit of the transaction accrue to a parent entity. Others involved swap transactions, wherein two entities exchanged resources in order to meet resource requirements, where the market element of the transaction's pricing reflects the difference in value between the resources swapped and not the individual market value of the resources swapped. The

⁴ Energy Division Staff Report at 5.

final set of transactions are sleeve transactions, wherein one entity purchases RA that is transferred to another buyer for the price of the original purchase plus some form of compensation for the intermediary. Sleeve transactions have been included as multiple transactions in the RA MPB calculation, double counting what a single market transaction is. This decision directs Energy Division to limit sleeves to a single transaction within the dataset.

Our intent is that these changes to the RA MPB calculation provide a base upon which to build other improvements through this OIR. We adopt these changes on an expedited basis to ensure that the refined methodology will be utilized in the 2026 ERRA Forecast proceedings.

1.2. Procedural Background

On February 20, 2025, the Commission issued an Order Instituting Rulemaking to Update and Reform Energy Resource Recovery Account and Power Charge Indifference Adjustment Policies and Processes (OIR), Rulemaking (R.) 25-02-005. The OIR preliminarily established an expedited track to consider potential changes to the calculation of the RA MPB. The OIR identified five potential changes to the RA MPB calculation.

The OIR named PG&E, SCE, SDG&E (collectively, IOUs), all CCAs, and all ESPs as Respondents to the proceeding. The OIR also required that service of the order be made to the service lists in 24 other proceedings involving ERRA and PCIA issues. The OIR was issued February 26, 2025. Respondents and interested parties were directed to file opening comments within 20 days and reply comments within 35 days of the issuance of the OIR. OIR also determined that the proceeding would be categorized as Ratesetting.

On February 26, 2025, the Chief Administrative Law Judge issued a ruling incorporating the “Energy Division Staff Report of the 2024-2025 Resource

Adequacy Market Price Benchmark” (Staff Report) into the administrative record. Parties were directed to address the Staff Report in their opening and reply comments.

On March 18, 2025, opening comments on the OIR were submitted by the IOUs (filed jointly), the California Community Choice Association (CalCCA) on behalf of itself and several of the Respondent CCA, the Alliance for Retail Energy Markets (AREM) and the Direct Access Customer Coalitions (DACC)(filed jointly), the Public Advocates Office of the Commission (Cal Advocates), the Utility Reform Network (TURN), and the Coalition of California Utility Employees (CUE). The same entities submitted reply comments. Shell Energy North America (US), L.P. (Shell) and the California Large Energy Consumers Association (CLECA) also filed timely reply comments.

A prehearing conference (PHC) was held on April 7, 2025. Each of the parties filing comments appeared. On April 8, 2025, a Scoping Memo and Ruling (Scoping Memo) was issued. The Scoping Memo identified three issues for consideration in Track One and established a briefing schedule.

On April 24, 2025, Small Business Utility Advocates (SBUA) was granted party status.

The Scoping Memo and Ruling authorized the filing of opening and reply briefs. Timely opening briefs were filed by the IOUs (jointly), CalCCA, AREM/DACC (jointly), CLECA, CUE, SBUA, Cal Advocates, and TURN. Timely reply briefs were filed by the IOUs (jointly), CalCCA, AREM/DACC (jointly), CUE, SBUA, CLECA, Shell, and Peninsula Clean Energy (PCEA).

Concurrently with their open brief, on April 21, 2025, the IOUs submitted a Joint Motion for Admission of Testimony Into the Record (Joint IOU Motion). CUE included testimony with its opening brief but did not immediately move for

its admission. AReM/DACC (jointly), CLECA, Shell and CalCCA filed responses to the Joint Motion. The Joint IOUs and CUE filed reply briefs in support of the Joint Motion and testimony. On April 30, 2025, CalCCA filed a Motion for Admission Into the Record of Rebuttal Testimony (CalCCA Motion). On May 2, 2025, CUE submitted a formal Motion For Admission of Testimony (CUE Motion).

On April 25, 2025, the ALJ ruled that all responses and replies to the Joint Motion be included with the parties' reply briefs.

1.3. Ruling on Testimony

The Joint IOU Motion, the CUE Motion, and the CalCCA Motion are denied. While the Commission is not bound by the California Evidence Code or the California Administrative Procedures Act (APA)⁵, we recognize each reflects well-reasoned evidentiary principles applied in analogous forums that are helpful in informing our decision making. Evidence Code Section 352 authorizes a trial judge to exclude otherwise relevant evidence if the probative value of the evidence is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create a substantial danger of undue prejudice or confusion of the issues. Similarly, the APA authorizes the presiding officer in an administrative hearing to "exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time."⁶

The testimony at issue here is relevant and somewhat probative of the issues in scope for Track One of the OIR. However, it is cumulative of the record

⁵ Gov. Code §§11500 *et seq.*

⁶ Gov. Code §11513(f).

evidence, the Energy Division Staff Report. The witnesses and testimony offered by CUE and the Joint IOUs largely confirms or expands upon the Staff Report.

The questions that predominate this track of the OIR are of policy, not fact. Because no party substantially disputes the factual record before us in the Staff Report, and because we find that the factual record established by the Staff Report to be sufficient to support both our factual and policy determinations, the admission of additional evidence would be cumulative.

Both the APA and Evidence Code Section 352 utilize a balancing test to evaluate the admissibility of cumulative evidence. We must balance the admission of relevant, but cumulative evidence against the need for an expeditious proceeding. As explained below, we find that our indifference methodology does not satisfy the statutory indifference mandate, and we identify vulnerability of the RA MPB calculation to manipulation. Prompt adoption of reforms is necessary. The inclusion of the proposed testimony presents challenges of fairness, due process, and other concerns that are worthy of consideration. Balancing the public interest in preserving indifference and preventing manipulation of the existing calculation against the limited probative value of the proffered testimony, we conclude that the probative value of the proffered testimony is substantially outweighed by the probability that its inclusion will necessitate an undue consumption of time.

In reaching this conclusion we are mindful of the fact that this is the first decision reached in this rulemaking proceeding. The parties will have ample opportunity to address additional reforms and changes to the PCIA, including the RA MPB. Our ruling is limited to the factual record and the policy decisions before us at this stage in the proceedings.

1.4. Submission Date

The issues identified in the assigned Commissioners Scoping Memo and Ruling for Track One were submitted for decision on April 30, 2025.

2. Jurisdiction

Sections 365.2 and 366.3 mandate that the Commission ensure that the movement of customers from bundled to unbundled service does not result in the remaining bundled customers or the departed customers paying the cost for resources that were not purchased on their behalf. In D.06-07-03, we adopted the PCIA as the mechanism by which the Commission would meet its indifference mandate.

In D.18-10-019, we provided a lengthy analysis of our statutory mandate to ensure neutrality, and the history of changes made to the PCIA calculation since its initial adoption. We concluded that the PCIA methodology did not meet our statutory indifference mandate. In D.19-10-001 and D.22-01-023 we adopted further refinements to the PCIA methodology. In each circumstance we made necessary revisions in order to uphold the indifference mandated by statute. Our decision today reflects our conclusion that the current RA MPB calculation is not promoting indifference.

3. Issues Before the Commission

The Scoping Memo and Ruling identified three issues for consideration in Track 1 of this proceeding:

1. Should the Commission expand the data considered when determining the Resource Adequacy (RA) MPBs by extending or eliminating the existing time limits on transaction data considered?
2. Should the Commission combine system, local, and

flexible RA into a single RA value when calculating the RA MPBs?

3. When determining the RA MPBs, should the Commission eliminate data that is duplicative or does not reflect market-based transactions? How should the Commission determine which transactions to eliminate?

4. Adopting A Single RA MPB Utilizing Three Years' Transaction Data

The current PCIA methodology adopted in D.18-10-019 tasked Energy Division with calculating and producing the RA MPBs. Costs are allocated among bundled and unbundled customers through the PCIA according to that methodology adopted in D.18-10-019. The MPBs are calculated prior to the adoption of the annual ERRA Forecast. D.18-10-019 created different MPBs based upon the three different types of RA (system, local, flexible). Local RA accounts for the majority of the current RA market because most resources have a local attribute.

D.18-10-019 established a temporal bucketing system based on contract execution date, which determines which contracts are used to calculate the system, flexible, and three local MPBs. Under the existing methodology, flexible and system RA MPBs are calculated utilizing one year of transaction data for the forecast and two years for the final. A local RA MPB is calculated for each of the Joint IOUs' regions, utilizing three years of transaction data for the forecast and four years of data for the final calculation.

4.1. The D.18-10-019 RA MPB Calculation Methodology Is Flawed

During the calculation of the 2024 Final and 2025 Forecast MPBs for the 2025 ERRA Forecast Proceedings, Energy Division identified two with the

methodology adopted in D.18-10-019 that are skewing the indifference amount:

1) the RA transaction dataset may not capture the full market value of the portfolio as currently configured, given the low volume of transactions compared to historical experience, and 2) non-market transactions included in the dataset used to calculate the MPBs.

Energy Division observed that MPB values produced under the existing methodology only reflect a subset of RA transaction data and market prices, rather than all transaction data and market prices for deliverability in a specific year. The temporal buckets determine what contract execution dates to include in the dataset to calculate the MPB, while the contract execution date itself determines whether the transaction falls within the time horizon or not. These time horizons exclude all transactions except for the most recent year, and as a result do not reflect the average market price associated with all contracts for deliverability in a specific year. The idea behind this approach is to use the most recent transaction data to capture the best reflection of the market value for RA, but that approach breaks down when transaction volumes decline as they have here.

Figure 1- Time Period of Transactions Used in MPB Calculation

RA Type	Forecast	Final
Local (SCE, SDG&E, PG&E)	3 years	4 years
Flexible	1 year	2 years
System	1 year	2 years

The evidence demonstrates that the categorization of RA types with differing temporal buckets is artificially dividing the market, since RA might be purchased as local RA but then be used to meet system RA requirements. Figure 1 above demonstrates the window from which transactions are considered when calculating the RA MPB for each class of RA. Under the existing framework, local

RA represents three years of transaction volume, whereas the flexible and system RA transaction volume is taken only from the previous year. When RA prices were relatively more stable, the difference between a long-run (three-year) and short-run (one-year) weighted-average RA price was less apparent. The recent spikes in RA prices procured in the year-ahead and month-ahead timeframe have magnified this discrepancy.

Historically, the RA Market has traded fairly robustly. However, when calculating the 2025 MPB Forecast values, Energy Division discovered a significant drop in transaction volume for the 2025 Forecast MPBs. Energy Division notes that the reduction of transaction volume indicates that a significantly greater amount of the RA capacity was procured prior to the October 2023-September 2024 timeframe than what is included in the RA MPB forecast calculation for 2025.⁷ Further, since LSEs met most, if not all of their total RA requirements for 2025, this means that most of the RA was procured prior to the date used for consideration in the 2025 MPB Forecast calculations.

The figure below shows the significant percentage change in MW volume captured in the 2024 MPB Forecast compared to the 2025 MPB forecast.

Figure 2: System, Flexible, and Local RA Transaction Volumes 2024-2025

	2024 MPB Forecast	2025 MPB Forecast	Percent change year over year
Flexible Transaction Volume (MW)	~41,000 MW-months (or ~3,400 per month)	~9,380 MW-months (or ~780 per month)	-77%
System Transaction Volume (MW)	~52,000 MW-months (or ~4,300 per month)	~6,705 MW-months (or ~600 MW per month)	-87%
Local Transaction Volume (MW)	~107,895 MW-months (or ~8,991 per month)	~116,570 MW months (or ~9,714 per month)	8%

⁷ Energy Division Staff Report at 6-7.

The MPBs themselves provide evidence that the current method used to calculate MPBs is flawed when transaction volumes see this magnitude of decline. Figure 3 demonstrates that in the 2024 final and 2025 forecast MPBs the calculated system RA value exceeded the calculated flexible RA value and the three local RA values. The existing MPB design disaggregates the local and flexible RA calculations from the system RA calculation based on the assumption that the former products will command premiums compared to system RA. The existing MPB design assumes that no load-serving entity (LSE) would pay a higher price for system RA than flexible RA, because flexible RA is a premium product. Similarly, except in rare cases, local RA is a premium product to system RA. The fact that the RA MPB reflects the opposite is substantial evidence that the current RA MPB methodology is flawed in the current observed market dynamics.

Figure 3-System, Flexible, and Local RA Values 2024-2025

MPB	2024 Final MPB	2025 Forecast MPB
Flexible	\$12.67	\$16.97
System	\$26.26	\$40.31
Local – PG&E	\$11.95	\$13.29
Local – SCE	\$10.24	\$11.23
Local – SDG&E	\$16.44	\$9.99

Energy Division concludes that applying the short-run price to the entirety of the IOU portfolio is unjustified because that price represents only a small fraction of the RA resources procured. This short-run price is further undermined by abnormally low levels of transaction volumes, which is resulting in MPBs divorced from the reality of the market. The OIR and the Staff Report initially proposed three changes to address this issue: 1) Include all transaction data available for a given delivery year, eliminating the time restrictions;

2) Eliminate the use of separate MPBs in favor of a single Combined RA MPB; and 3) Adopt monthly MPB values rather than annual values.

We are persuaded that the volume of transactions included in the 2025 MPB forecast leads to an RA MPB that does not represent the value of the portfolio and that this results in RA MPB values that do not uphold the indifference mandate. Immediate changes are required in this expedited decision. However, given the expedited process by which we adopt these changes, we are cautious not to depart from the existing mark-to-market paradigm that underlies the RA MPB calculation in the PCIA. Our decision today strikes a balance between the need for immediate fixes and our commitment to a thoughtful, deliberate consideration of changes that are needed to ensure that we maintain the cost indifference principles mandated by Section 366.2.

4.2. Party Input On Moving to a Single RA MPB Calculation

In their opening comments on the OIR, the parties responded to Energy Division's proposals, three of which relate to the changes adopted in this decision. In response to the proposal to eliminate the existing transaction time limits in favor of considering all transaction data available for a given delivery year, the Joint IOUs, TURN, and Cal Advocates supported expanding the dataset to all available transactions.⁸ CalCCA expressed opposition in its opening comments, but in reply comments signaled an openness to a narrow expansion

⁸ Joint IOU's Opening Comments on the Order Instituting Rulemaking at 15-18; Opening Comments of The Utility Report Network on the Order Instituting Rulemaking at 1-3; The Public Advocates Office Opening Comments on the Order Instituting Rulemaking and Energy Division Staff Report at 2-3.

of the dataset in order to reach an acceptable transaction volume.^{9,10} CalCCA is concerned that full adoption of the proposal would be inconsistent with the mark-to-market paradigm.¹¹ CUE sounded a similar note, supporting further evaluation of the proposal.¹² In their Joint Comments, AReM and DACC acknowledged Energy Division's concern and proposed a compromise expansion to allow more years of transaction data while still imposing a temporal limit.¹³

On the question of eliminating separate MPBs for each class of RA, CalCCA, the Joint IOUs, and Cal Advocates expressed support for the change.^{14,15,16} The Joint IOUs noted that, taken in conjunction with the expansion of the years from which transactions could be considered, adopting a single RA MPB would expand the transaction data available to calculate the RA MPB.¹⁷

CalCCA, TURN, and Cal Advocates voiced support for the proposal to adopt monthly RA MPB values, though Cal Advocates noted the possibility of

⁹ CalCCA Opening Comments at 5, 24-33.

¹⁰ California Community Choice Association's Reply Comments on the Order Instituting Rulemaking and Energy Division Staff Report (CalCCA Reply Comments) at 15-21.

¹¹ CalCCA Opening Comments at 2, 3, and 27-28.

¹² Opening Comments of the California Utility Employees on Order Instituting Rulemaking and Energy Division Staff Report of the 2024-2025 Resource Adequacy Price Benchmark at 3.

¹³ Opening Comments on the Rulemaking by the Direct Access Customer Coalition and Alliance for Retail Energy Markets at 12.

¹⁴ CalCCA Opening Comments at 34-35.

¹⁵ Joint IOUs Opening Comments at 23-24.

¹⁶ Cal Advocates Opening Comments at 6-7.

¹⁷ Joint IOUs Opening Comments at 22-23.

insufficient transaction data for certain months.¹⁸ The Joint IOUs shared that concern in voicing opposition to monthly RA MPBs.¹⁹

4.3. A Single RA MPB Utilizing the Existing Local RA Transaction Window Balances the Mark-to-Market Paradigm With the Need for Additional Transaction Data

We agree with CalCCA that the expedited nature of this proceeding necessitates caution to ensure that the changes adopted work within the D.18-10-019 mark-to-market paradigm. To that end, it is our goal to strike a balance between the need to adjust the flaws in our present approach and preserving the mark-to-market paradigm. Our decision today aims to expand the available transaction data, recognizes that separate MBPs artificially divide RA purchases, and upholds the existing mark-to-market principles of D.18-10-019.

We find that RA procured in the market is categorized as local RA due to its location, though it may have been procured to meet system obligations. This results in an incomplete dataset for the MPB calculation and inconsistency between how RA is categorized in the MPB and how it is used by the LSE. As explained in the Staff Report, historically there was a premium on local RA, because it is more difficult to replace than system RA which can come from anywhere on the grid. Currently, the MPBs indicate that system requirements are the most constrained, even though local and flexible RA can meet these requirements. As a result, flexible and system RA in the MPB calculations do not actually reflect that market prices are being driven by constrained RA.

¹⁸ CalCCA Opening Comments at 34-35; TURN Opening Comments at 4-5; Cal Advocates Opening Comments at 5-6.

¹⁹ Joint IOUs Opening Comments at 21-24.

Accordingly, a single MPB value should be calculated rather than artificially dividing the market into system, flexible and local MPB values. The RA MPB categories should be consolidated into one single RA MPB. Combining the MPB categories into a single RA MPB value based on the same temporal bucket currently adopted for local RA would provide a more accurate reflection of RA market costs. Combining the categories also eliminates the arbitrary slicing of the market.

The adoption of a single RA MPB necessitates amendment of the transaction data window. The current system utilizes one and two years of data for forecast and final system and flexible MPBs, respectively, and three and four years of data for forecast and final local MPBs, respectively. Consolidation into a single RA MPB compels us to standardize the data considered for each type of RA. Adopting a period of less than three and four years would remove local RA transactions from the calculation. We see no justification for reducing the amount of data considered. Fixing the data set at three and four years balances consideration of more data without undermining our mark-to-market principle. Applying the current local RA transaction timeframe strikes an acceptable balance between the need for a time restriction and the need for additional transaction data. Accordingly, we adopt a three-year transaction window for the annual forecast RA MPB and a four-year transaction window for the final RA MPB.

Adoption of monthly MPBs is beyond the scope of this track of the OIR. This idea may merit further study in a future phase of this proceeding or in a successor proceeding. Similarly, our commitment to the existing mark-to-market paradigm in the PCIA for purposes of this decision does not preclude our

willingness to consider a different or amended approach to the principle of indifference in subsequent tracks of this OIR or in a successor proceeding.

5. Eliminating Non-Market Based and Redundant Transaction Data From the RA MPB Calculation

The RA MPB is intended to reflect market prices, which assumes that the pricing data reflects supply and demand economics. In its review of the transactions used to calculate the 2024 Final and 2025 Forecast MPBs, Energy Division observed 82 contracts at or above \$100/kW-month. Those contracts are significantly higher than the \$26.26/kW-month system RA MPB adopted for 2024, the highest of the RA MPBs that year. The cost of those 82 contracts may be reflective of market pricing. If so, they should be considered when calculating the RA MPB. But given how much those values diverge from the overall RA MPB, they raise questions of whether they reflect market-based pricing, wherein pricing is driven by the economic principles of supply and demand. We have reviewed those transactions and found that many were not the product of true competitive market price dynamics. Energy Division's Staff Report identifies three transaction categories of concern: affiliate transactions, swap transactions, and sleeve transactions.

As discussed below, affiliate transactions are not based upon the supply and demand factors that establish market prices. The total value of the assets exchanged in a swap does not reflect the market price/market value of the transaction to the transacting parties. Sleeve transactions may reflect market prices but distort the MPB by reporting a single market price as multiple transactions, overweighting that particular transaction within the dataset. Accordingly, we conclude that affiliate, swap, and redundant sleeve transactions should be removed from consideration when fixing the RA MPB.

5.1. Affiliate Transactions

An affiliate transaction is one in which two affiliated business entities engage in a transaction wherein the benefits of the transaction can accrue to the same entity. Affiliate transactions may include transactions between two subsidiaries of a parent entity, a transaction between parent and subsidiary entity, or other transactions wherein the entities have full or partial shared ownership. Because the benefits of both sides of the transaction may accrue to the same entity, considerations other than market prices, such as tax, regulatory requirements, and inventory, are likely to predominate the value of the transaction.

In its data review of the 2024 Final MPBs and the 2025 Forecast MPBs, Energy Division observed that the price of transactions between LSEs and their affiliates were amongst the highest. The inclusion of these transactions skews the RA MPB higher. Affiliate transactions are equally capable of skewing the MPB lower. The transaction pricing is determined internally with no market exposure. They are not required to consider market dynamics, nor are the resources available to non-affiliate entities. As a result, the prices can range much higher or lower than the market price.

The inclusion of affiliate transactions introduces another vulnerability to the accuracy of RA MPB calculations. Transacting affiliates may seek to skew the RA MPB through artificial pricing in order to produce a more beneficial PCIA for their LSE arms. The size of a credit in rates to departed load is connected to the MPB. Higher MPBs lead to larger credits for the affiliate's LSE arm. The record in this proceeding does not support a finding that purposeful manipulation has taken place. However, the potential for such manipulation is clear and requires action to prevent abuse.

5.2. Swap Transactions

A swap is a transaction between two LSEs or an LSE and a marketer or generation owner of system, local, or flexible RA. In a swap, the parties exchange resources by category, for example when Entity A swaps local RA with Entity B for Entity B's flexible RA. The value that A and B assign to the RA is not the determinative factor in the value of the transaction. Whether the parties value their resources at \$25 and \$30/kW-month or \$100 and \$105/kW-month does not reflect the market value driving the transaction. A is paying B \$5/kW-month for the swap. Swap transactions may or may not have a price spread. The price spread, or lack thereof, and not the price the transacting parties assign their RA, is the element of the transaction that reflects market value. However, the current RA MPB calculation utilizes the value assigned by the transacting parties to their RA.

Swap transactions are particularly concerning. Because the price spread is the determinative factor in the parties' valuation of the transaction, the parties are free to pick any baseline value for their RA. System RA that may otherwise sell for \$15/kW-month and local RA that may otherwise sell for \$10/kW-month when sold in a regular transaction, can be assigned much higher or lower values in order to distort the RA MPB calculation. In this scenario, system RA valuation of \$300/kW-month and a local RA valuation of \$295/kW-month reflects the same transaction value to the parties, though it produces significant upward pressure on the RA MPB calculation. As noted above, the record before us does not support a finding of manipulation of the RA MPB calculation through swap transactions at this time. But the potential for manipulation is obvious and concerning, necessitating revision.

5.3. Sleeve Transactions

A sleeve transaction involves one party transacting on behalf of another party. For example, Entity A may procure capacity at a set price and shortly thereafter sell that resource to another party. The subsequent transaction's price reflects a premium, commission, or service fee rather than a new market valuation. The current RA MPB calculation includes both the initial transaction and the subsequent sleeve transaction as separate transactions, effectively double counting the price of the transaction. Counting a single transaction multiple times overweights that market transaction in the dataset.

5.4. Party Comments on Eliminating Affiliate, Swap, and Sleeve Transaction Data

Unlike the changes proposed for the calculation methodology and size of the dataset, there is generally a consensus among the parties that affiliate, swap, and redundant sleeve transactions should be eliminated from consideration. The parties share our concern that these transactions influence the MPB and note the potential for manipulation.²⁰ AReM and DACC take no position on affiliate transactions, but support the removal of swap and sleeve transactions.²¹ CalCCA, CLECA, and CUE emphasize that the process for identifying and excluding these transactions should be objective and transparent.²² Shell opposes adoption of any RA MPB changes on an expedited basis.²³

²⁰ Joint IOUs Opening Comments at 19, 20; CalCCA Opening Comments at 32-34; Cal Advocates Opening Comments at 3-5; CUE Opening Comments at 4-5; CLECA Reply Comments at 5.

²¹ AReM/DACC Opening Comments at 6.

²² *Id.*

²³ Shell Reply Comments at 2.

We appreciate the concerns raised regarding standards. The changes adopted herein are formulated to ensure objectivity and transparency. The record before us includes a modeling of past years' RA MPBs using these proposed changes that satisfies our concern regarding the validity of the change.

5.5. Removing Affiliate, Swap, and Redundant Elements of Sleeve Transactions from the RA MPB Calculation

Based upon the foregoing, affiliate, swap, and redundant sleeve transaction data shall be removed from the dataset used to calculate RA MPBs. LSEs shall include affiliate, swap, and sleeve transaction data and shall identify them as such when responding to data requests from Energy Division. Energy Division is directed to evaluate the identified transactions to confirm that they are subject to exclusion. Energy Division shall also review all transaction data to ensure all affiliate, swap, and sleeve transactions are identified. Energy Division shall exclude all swap and affiliate transactions. Energy Division shall also evaluate sleeve transaction to ensure that the transactions are only counted once in the RA MPB calculation. To the extent possible, the transaction included should reflect the market price independent of any premiums, commissions, or fees paid to facilitate the sleeve.

In D.06-12-029, we adopted the Affiliate Transaction Rules Applicable to Large California Energy Utilities. We adopt and incorporate by reference Section I., Subdivision A. of those rules as the definition of an affiliate for purposes of defining excludable transactions in the RA MPB calculation. However, we exempt from this provision transactions involving local RA between the PG&E Centralized Procurement Entity (CPE) and PG&E LSE and between the SCE CPE and LSE. The Commission ensures that procurement by the PG&E CPE and SCE

CPE is contracted at arm's length by requiring the use of independent evaluators,²⁴ competitive neutrality rules,²⁵ and annual reporting.²⁶ We are satisfied that the measures implemented to ensure that transactions between the CPE and their respective LSEs are sufficiently at arm's length to ensure that they reflect market prices.

Swap transactions are defined as an exchange of RA resources between two entities in which the price difference of the resources exchanged reflects a premium paid by one party to the exchange. For example, where parties exchange local, flexible, and/or system RA with the system RA receiving a price premium. We direct LSEs to identify as potential swaps all transactions involving an exchange of resources as an element of the consideration in the contract.

The Federal Energy Regulatory Commission has adopted guidance defining sleeves.

In a sleeve transaction, an entity acts as an intermediary counterparty to accomplish a sale between two other counterparties who may not be set up to transact with each other using common enabling agreements ... or who may not meet credit requirements. Parties that act as intermediaries in this fashion usually collect a nominal fee for the transaction, but do not collect an additional profit on the underlying transaction.

(Conoco Phillips Co. 175 F.E.R.C. ¶ 61,226 at ¶ 62297.)

FERC goes on to provide an example of a sleeve transaction wherein an energy resource was purchased by a broker for \$1,000/MWh. The broker

²⁴ See D.20-06-022 at 86, 97-98.

²⁵ *Id.* at 63-66.

²⁶ *Id.* at 99,.

received a \$0.50/MWh fee for facilitating the transaction, with the client paying a total of \$1,000.50/MWh to the broker. The transaction described is a singular market price with a facilitation fee paid for the broker's services.

We adopt and incorporate by reference the FERC definition of a sleeve transaction for purposes of today's decision. Energy Division shall exclude the redundant transactions within the sleeve so that the RA MPB calculation reflects a single market transaction. To the extent possible, the transaction included should reflect market pricing independent of any premiums, commissions, or fees paid to a third party to facilitate the sleeve.

**6. The Modifications Adopted
Today Shall Apply Beginning
With the 2025 Final RA MPB**

In its briefs and comments, CalCCA argues that the changes adopted herein should not take effect until the 2026 Forecast. It argues that applying this methodology to the Final 2025 calculations would violate principles prohibiting retroactive ratemaking. Curiously, CalCCA grounds this argument in the 1978 California Supreme Court decision in *Southern California Edison v. Public Utilities Commission* (20 Cal.3d 813). In *Edison*, the Supreme Court upheld our decision requiring SCE to return surcharge fees to customers after we found flaws in the methodology previously approved for collecting the fees.²⁷ The *Edison* decision emphasized that the court's 1965 decision²⁸ interpreting Section 728 as a prohibition against retroactive ratemaking was not intended to apply to every situation where action by the Commission results in retroactive application. The

²⁷ *Id.* at 816.

²⁸ *Pacific Telephone & Telegraph Co. v. Public Utilities Commission* (1965) 62 Cal. 2d 634, 650-656.

principle only applies to setting general rates.²⁹ This OIR proceeding, and this decision, do not set general rates.

Under CalCCA's formulation, the Supreme Court's finding that Section 728 includes a general prohibition on retroactive ratesetting is in conflict with the specific mandate to ensure neutrality under Sections 365.2 and 366.2. The 2025 forecast was not a guarantee of the final 2025 outcome and was always subject to the indifference mandate. The changes adopted herein work to improve the dataset and the RA MPB calculations. By adopting them, we uphold the reasonableness of D.18-10-019 and refine the methodology to ensure that principles of the decision and the indifference mandate are upheld.

The adoption of the changes to the RA MPB outlined above are necessary in order to comply with the indifference mandated by statute. Nothing in the statutes mandating indifference limits our authority to modify the indifference calculation methodology when necessary. We find that it would be inconsistent with the statutory mandate to ensure indifference to make the above findings, yet prohibit the adopted remedy from being applied immediately. Accordingly, the Energy Division is directed to apply the new methodology in the calculation of the 2025 Final RA MPB and in succeeding forecast and final MPBs.

7. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

²⁹ 20 Cal.3d at 817.

Two comments have been added to the docket card. Neither comment is germane to the issues considered in this phase of the OIR.

8. Procedural Matters

This decision affirms all rulings made by the ALJ and assigned Commissioner in this proceeding. All motions not ruled on are deemed denied.

9. Comments on Proposed Decision

The proposed decision of ALJ Jacob L. Rambo in this matter was mailed to the parties in accordance with Section 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

10. Assignment of Proceeding

John Reynolds is the assigned Commissioner and Jacob L. Rambo is the assigned ALJ in this proceeding.

Findings of Fact

1. The Commission's current RA MPB calculation is flawed and vulnerable to manipulation.
2. System and flexible RA transaction volume dropped by 77% and 87%, respectively, between the 2024 MPB Forecast and the 2025 MPB Forecast, while local transaction volume increased by 8% during the same period.
3. The current RA MPB methodology arbitrarily slices the procurement market. Most RA procured in the market satisfies local RA requirements, even if procured to satisfy system RA requirements. Local and flexible RA procurements can be utilized to satisfy system requirements. Dividing the RA MPB into system, local, and flexible categories does not reflect the compliance requirements that drove the market price of the procurement transaction.

4. The current RA MPB methodology examines a three-year dataset to determine the local RA MPB forecast, adding a fourth year to the dataset for the final local RA MPB. Adjusting the methodology to a single RA MPB calculation, utilizing system, flexible, and local RA procurement data from the three- and four- year datasets, allows for the consideration of more transaction data.

5. Combining the three MPBs into a single MPB with three years of data for forecast MPBs and an additional year of data for final MPBs appropriately balances data sufficiency with the Commission's currently established method of valuing RA portfolios based upon short-run market prices.

6. The RA MPB should be based upon competitive market pricing that reflects supply and demand dynamics.

7. Affiliate and swap transactions reflect considerations other than market-based supply and demand pricing of the resources involved in the transaction.

8. Inclusion of affiliate and swap transactions in the RA MPB calculation introduces the potential for manipulation of the RA MPB.

9. Transactions between the PG&E CPE and PG&E LSE, as well as transactions between the SCE CPE and SCE LSE are subject to independent verification that ensures transaction values reflect competitive pricing.

10. Sleeve transactions involve multiple transactions based involving the same resource and single market-based price. Considering each transaction within a sleeve as a separate transaction in the RA MPB calculation result in the overweighting of a single price determination within the transaction dataset and distorts the RA MPB.

Conclusions of Law

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.

2. The Commission should adopt a single RA MPB based upon three-years' transaction data for the forecast calculation and four-years' transaction data for the final calculation.

3. The definition of affiliate transaction adopted in Section I. A. of D.06-12-029, Affiliate Transaction Rules Applicable to Large California Energy Utilities should be applied for purposes of identifying affiliate RA transactions.

4. Swap transactions are an exchange of RA resources between two entities in which the price difference of the resources exchanged reflects a premium paid by one party to the exchange.

5. Affiliate and swap transactions should be excluded from RA MBP calculations. LSEs should identify all affiliate transactions and all transactions in which an exchange of energy resources is an element of consideration in the transaction.

6. Transactions between the PG&E CPE and PG&E LSE, as well as transactions between the SCE CPE and SCE LSE should not be considered affiliate transactions for the purposes of the RA MPB calculation.

7. The definition of sleeve transactions adopted by FERC in Conoco Phillips Co., 175 F.E.R.C. ¶ 61,226 at ¶ 62297, should be adopted by the Commission.

8. Only one transaction within a sleeve should be included in the RA MPB calculation. To the extent possible, the transaction included should reflect market pricing independent of any premiums, commissions, or fees paid to a third party to facilitate the sleeve.

9. Application of these changes to the 2025 Final RA MPB does not violate the prohibition against retroactive ratemaking.

10. The changes adopted should be applied to the calculation of the 2025 Final and 2026 Forecast RA MPB.

O R D E R

IT IS ORDERED that:

1. The Commission's Energy Division shall calculate a single Resource Adequacy (RA) Market Price Benchmark (MPB) for use in determining the annual Power Charge Indifference Adjustment (PCIA). The Energy Division shall utilize three-years' transaction data when adopting the annual forecast RA MPB and four-years' transaction data when adopting the annual final RA MPB. The Energy Division shall exclude from the calculation affiliate and swap transaction data. The Energy Division shall utilize a single transaction within a sleeve transaction in the RA MPB calculation.
2. The methodology adopted in this decision shall be effective immediately.
3. Rulemaking 25-02-005 remains open.

This order is effective today.

Dated _____, at Sacramento, California