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BEFORE THE PUBLIC UTILITIES COMMISSION
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Order Instituting Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes.	R.20-05-003

CALIFORNIA COMMUNITY CHOICE ASSOCIATION COMMENTS ON ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENTS ON BACKSTOP PROCUREMENT AND COST ALLOCATION MECHANISMS

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The California Community Choice Association (CalCCA)[1] submits these Comments in response to the *Administrative Law Judge's Ruling Seeking Comments on Backstop Procurement and Cost Allocation Mechanisms* issued on June 5, 2020 (ALJ Ruling) and the June 23, 2020, *E-Mail Ruling Granting the Joint Utilities' Request for Extension for Comments and Proposals in Response to ALJ's Ruling Seeking Comments on Backstop Procurement and Cost Allocation Mechanisms.*

I. INTRODUCTION

The ALJ Ruling seeks comments on two important issues that must be resolved to fully implement Decision (D.)19-11-016: (1) cost allocation for procurement conducted by "one integrated resource planning load-serving entity (LSE) on behalf of another," and (2) backstop

[1] California Community Choice Association represents the interests of 20 operational community choice electricity providers in California: Apple Valley Choice Energy, CleanPowerSF, Clean Power Alliance, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Monterey Bay Community Power, Peninsula Clean Energy, Pioneer Community Energy, Pico Rivera Innovative Municipal Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Jacinto Power, San José Clean Energy, Silicon Valley Clean Energy, Solana Energy Alliance, Sonoma Clean Power, Valley Clean Energy, and Western Community Energy.

procurement by an investor-owned utility (IOU) for LSEs that do not secure their required share of incremental procurement directed by D.19-11-016. These comments address both issues.

CalCCA proposes a cost recovery mechanism that imposes all IOU costs incurred to meet the procurement responsibilities of other LSEs solely and directly on those LSEs, rather than the LSEs' customers. This approach, which aligns with the fundamental principal of LSE cost responsibility adopted in D.19-11-016, also simplifies cost recovery, ensures that all LSEs equally bear the risk and costs of their choices, and prevents billing distortions by keeping these costs in each LSE's "generation" charges. Customers of other LSEs (including IOUs) who meet their commitment to self-procure their share of incremental resources should not be burdened with the costs of any LSE that chooses to lean on the IOU.

CalCCA generally supports the backstop procurement mechanism milestones advanced by the ALJ Ruling with limited clarification. In particular, the Commission should further refine the milestones for procurement by one LSE of another LSE's "excess" procurement as proposed in these comments. With these changes and other limited changes, the proposed milestones reasonably balance the ability of an LSE to meet its own obligations with the need to ensure the incremental resources are online when needed.

II. THE COMMISSION SHOULD ADOPT A COST RECOVERY MECHANISM THAT RECOVERS THE PROCUREMENT COSTS INCURRED BY AN IOU TO SERVE OTHER LSES SOLELY AND DIRECTLY FROM THOSE LSES

A. Implementation of D.19-11-016 Requires More Targeted Cost Recovery Than the Existing CAM Allows

CalCCA roundly appreciates the Commission's concerted efforts to preserve the right of all LSEs to self-procure their shares of the 3,300 MW system resource adequacy (RA)

requirement[2] directed in D.19-11-016.[3] Recognizing that not all LSEs may be equally inclined to self-procure, the Commission also allowed an LSE to lean on the IOU to procure the LSE's share.[4] Regardless of the LSE's choice, however, D.19-11-016 makes clear that the ultimate procurement responsibility lies with the LSE.

Cost recovery under this approach requires a more targeted approach than the Cost Allocation Mechanism (CAM), as the Commission acknowledges in calling for a "modified CAM."[5] The CAM has historically been applied to situations where "[t]he Commission designated IOUs to procure [] new generation through long-term PPAs, and the rights to the capacity were allocated among *all LSEs* in the IOU's service territory."[6] Because the capacity procured by the IOU pursuant to D.19-11-016 is *not* being allocated among "all LSEs in the IOU's service territory," but to the IOU and the few LSEs that opted not to self-provide, the traditional CAM is not well suited for cost recovery. Accordingly, the Assigned ALJ rightly invited "any and all workable proposals, regardless of whether they conform strictly to this directional language in D.19-11-016."[7]

B. CalCCA Proposal: All Costs of IOU Procurement on Behalf of Other LSEs Should Be Recovered Directly from Those LSEs

CalCCA proposes here an LSE-based recovery mechanism. The costs for any IOU procurement on behalf of other LSEs, whether for those that elect not to self-provide, or for those who attempt to self-provide and fail to do so, should be assessed directly to that LSE. An LSE-based approach aligns with a foundational principle established in D.19-11-016:

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2 D.19-11-016, Ordering Paragraph 5 at 81-82.
3 *Id.* at 37.
4 *Id.* at 82.
5 D.19-11-016 at 67.
6 D.13-02-015, at 98 (emphasis supplied).
7 ALJ Ruling at 10.

> Our preference is that a cost allocation framework where IOUs procure on behalf of other LSEs in their territories be used as a backup plan, in the event that the LSEs with the primary responsibility fail to fulfill their obligations. We may need to utilize the CAM or a similar mechanism, as TURN and other parties suggest, but for the primary procurement responsibility, we prefer to assign responsibility where we believe it should be, with the LSEs directly.[8]

This approach most closely reflects the business nature of the procurement here, is administratively simple, and avoids the competitive distortions inherent in trying to expand CAM to cover only a subset of LSEs in an IOU's service territory. It also conforms to the ALJ Ruling: "costs are borne by and benefits are credited to the customers on behalf of whom they were procured . . . customers of opt-out LSEs pay as close to equivalent costs and receive as close to equivalent benefits, per MW, as bundled customers, . . . [and] based on publicly-available information."[9]

CalCCA proposes that the IOUs directly bill LSEs for all incremental procurement costs procured by the IOU on behalf of those LSEs' customers, using an EEI Master Agreement and Confirmation transaction structure. The costs, including impacts on IOU credit costs, associated with the IOU's new incremental portfolio would be allocated among and billed to these LSEs directly using the ratio of their relative procurement obligations specified in Ordering Paragraph 3 of D.19-11-016. While the IOU will be required to procure prudently to match these LSEs' load, a ratio allocation ensures that the cost of any excess procurement due to the inherent lumpiness of the process will be spread proportionally among leaning LSEs.

A leaning LSE's obligations should be secured through creditworthiness and collateral protocols used by the IOU in its existing RA sales process. LSEs without sufficient

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8 *Id.* at 37 (emphasis supplied).

9 *Id.* At 10.

creditworthiness could be required to post collateral or take other actions to secure their procurement. If an LSE fails to pay, the obligation for the leaning LSE's share would first be satisfied by the LSE's collateral, and any remaining obligation would be recovered from the pool of LSEs participating in the IOU's incremental procurement. In no event should bundled customers or customers of self-procuring LSEs be left to backstop the projects for these LSEs as doing so provides non-self-procuring LSEs with a financial benefit that no other LSE has.

C. CalCCA's Proposal Improves Upon the Mechanism Prescribed by D.19-11-016

1. Billing LSEs Rather than Customers Appropriately Requires LSEs Choosing to Lean on IOU Procurement to Directly Bear the Risk and Costs of Self-Procurement

Billing customers, rather than the LSE, presents a risk of shifting credit risk and other administrative costs from the leaning LSE to IOU bundled customers. The costs of procurement go beyond the contract price for the resource, including debt equivalence, credit risk, and other administrative costs. If these costs are not fully internalized within the contract struck by the IOU or recovered through the associated charge, then the IOU and its customers are subsidizing leaning LSEs.

In addition, because the costs are recovered from LSEs' customers, rather than the LSE itself, if the LSE were to exit the market, it would face no financial consequences from the incremental procurement requirement. The LSE would have no "stranded" cost resulting from the incremental procurement. A self-procuring LSE, in contrast, would face the full financial consequence of the incremental procurement contracts it undertook.

These benefits may be the reason leaning on IOU procurement has attracted interest from some of the largest non-IOUs in the market.[10] While electing IOU procurement may be the right choice for small or newly launching LSEs, it should not be a tool for large or established LSEs to avoid the risk and costs of developing their share of resources needed to maintain a reliable electric system. Billing the LSE directly creates the right procurement incentives for LSEs to engage in the procurement necessary to meet their customers' needs.

2. Billing LSEs Rather Than Customers Avoids Further Distortion in Customer Billing

Directly billing LSEs eliminates the distortion CAM creates in bill presentation. Because of the CAM, not all "generation" charges today are reflected in the "generation charge" appearing on a customer's bill. CAM costs are detailed in the IOU's tariffs as a "New System Generation Charge."[11] These generation costs are not separately identified on customer bills. As PG&E's tariff explains: "Distribution and New System Generation Charges are combined for presentation on customer bills."[12] Consequently, when a customer looks at its bill, it will be unaware that embedded in its distribution charge is a generation rate component. This presentation fundamentally distorts markets and undermines the ability of consumers to easily compare rates among their generation providers. It must be minimized.

Recovering incremental procurement costs directly from the LSE avoids further exacerbating the rate distortion caused by CAM. The IOU would bill the LSE directly, and the LSE would recover the costs through the generation rate that appears on the customer's bill.

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[10] An April 15, 2020, ALJ Ruling in this proceeding shows that large ESPs, along with two very small CCAs, have opted out of conducting their own system RA requirements. April 15, 2020 ALJ Ruling at 8.

[11] *See, e.g.,* PG&E Electric Schedule A-1, Sheet 5

[12] *Id.*, n.**.

This places all LSEs on a level playing field, since self-procuring LSEs' costs will also appear in their generation rates.

While this rate distortion remains a problem with the CAM today, inhibiting a reasonable understanding of customer bills, using a similar mechanism for the backstop costs would magnify the problem and create a competitive distortion. A self-procuring LSE will reflect its procurement of resources to meet D.19-11-016 requirements in its generation component, where the costs rightly belong. An LSE leaning on the IOU, however, can mask this generation cost by allowing the IOU to fold it into distribution charges for billing. Thus, if a customer were trying to compare generation costs, it could not. And LSEs choosing to self-procure will *appear* to have higher generation costs than backstopped LSEs, because the latter will mask their costs in distribution charges. Keeping backstopped costs as CAM charges thus both undermines consumer protection and tips the playing field in favor of backstopped LSEs, rather than the LSEs who shoulder their own procurement. The Commission recognized in D.19-11-016 that any back-stop procurement mechanism should not disincentivize self-procuring LSEs from being successful with their full procurement requirement; it is illogical to embed within a cost recovery mechanism the disincentive to self-procure at all.[13]

3. Billing LSEs Rather Than Customers Simplifies Administration

Billing LSEs rather than their customers is a simple approach. Most if not all LSEs already have EEI Master Agreements in place with their respective IOUs, and regularly execution confirmations thereunder; RA transactions between IOUs and LSEs are commonplace. Confirmations are largely pro-forma and can be quickly (re)negotiated, as needed. The leaning LSE would recover their costs through the generation rate billed monthly to their customers in

[13] *See* ALJ Ruling at 4.

the same way a self-procuring LSE will recover its incremental procurement costs. This critical symmetry preserves competitive balance.

In contrast, pursuing the initial framework in D.19-11-016 would require development of a new NBC charge for customers – requiring further cost allocation and rate design – and the attendant billing system changes. The existing CAM mechanism, which recovers costs through the "New System Generation Charge" (NSGC), [14] cannot be directly appropriated for this purpose. The NSGC, which is merged with delivery charges for billing,[15] does not differentiate among customers based on the LSE that serves them; the only distinctions are based on a customer's rate schedule. The CAM is allocated to *all* customers of *all* LSEs under the theory that the resources provide reliability benefits to all customers in the IOU's service territory.[16] The costs of procuring on behalf of *specific* LSEs thus cannot be allocated in the same manner as current CAM charges are allocated through the NSGC and will need to recovered through a separate charge or a separate component of the NSGC. The new charge will need to differentiate among LSEs and customer classes, creating a multiplicity of additional rates and imposing significant complexity for ratemaking.

An LSE-billing approach, as proposed in Section II.B simplifies the cost recovery. No allocation among customers would be required and no new customer charges would need to be developed.

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[14] CAM rates vary by rate schedule. *See, e.g.,* PG&E Tariff Schedule E-20, Sheet 7, and Schedule A-1, Sheet 5.

[15] *See, e.g.*, PG&E Electric Schedule A-1, Sheet 5

[16] D.06-07-029, Ordering Paragraph 1 at 61; *see also id.* at 7, 26.

III. THE COMMISSION SHOULD ADOPT THE PROPOSED MILESTONE PROCEDURE WITH LIMITED MODIFICATIONS

1. Do the proposed trigger points align with typical and realistic development and contracting timelines for resource types relevant to D.19-11-016? If not, propose alternative milestones and trigger points.

Milestone #2 (T-6 Months). The use of the term "Notice to Proceed" (NTP) required at T-6 lacks clarity in the context of the acquisition of completed assets. In an NTP transaction structure, the sale of the project occurs at the time of notice, shifting the construction and timing risk to the buyer. More typical in the purchase of renewable generation assets is a "Commercial Operation Date" turnkey structure, where the developer maintains the construction and timely delivery risk. The NTP requirement thus should be broadened to include either type of transaction as follows: "Gen / Storage: Evidence of notice(s) to proceed, including Notice to Proceed, Construction Start Date, or Commencement of Construction or any alternative term specifying the date on which construction of the project begins."

2. Are the showings for each milestone practical and effective? If not, explain why not and propose alternatives.

Yes, practical and effective.

3. Should showings for demand response and imports be required on August 1, 2021, beyond those that LSEs are required to make in the resource adequacy proceeding?

For accounting clarity and completeness, all resources being used to meet the requirements of D.19-11-016 should be included in LSEs' August 1, 2021, 2022, and 2023 compliances showings.

4. Is the third milestone's trigger point (commercial operation date by August 1, 2021) helpful in attempting to best meet D.19-11-016's requirements in the event of a resource failure? If it is too late to address D.19-11-016 goals, what other options should be considered to address late-identified failure? If is it too soon to assume the complete failure of a resource that has successfully met the first and second trigger points, how could the backstop mechanism be improved to address D.19-11-016 goals?

The Commission should consider late-stage resource delays on a case-by-case basis in concert with the LSE. A resource which has commenced construction but is not operational is more likely to be quickly and viably brought online than a new procurement effort initiated after August 1.

5. The proposal above contemplates backstop procurement within each procurement tranche, which is a different approach than the Commission took in D.19-11-016, which did not allow LSEs to elect in advance to "partially self-provide." Comment if you disagree with this proposal and indicate why. In your response, explain how a successfully developed resource meeting part of an LSEs obligation should be treated if the IOU backstopped fully for a particular tranche of procurement (or for all three tranches, if you believe that any failure should trigger full procurement, not just procurement for the tranche in which there was partial failure).

The partial backstop approach reasonably balances the competing goals of ensuring sufficient new build while not unnecessarily or unreasonably ordering duplicative procurement. Ordering full backstop procurement for an LSE that narrowly misses its procurement obligation due to a project delay or project failure would unreasonably burden that LSE's ratepayers with duplicative resource costs. Generally, this process should seek to minimize ratepayer costs and duplicative procurement; that the need for backstop procurement for delayed but not failed projects should be weighed against the probability that the marginal capacity would be called on by CAISO between the required online date and the eventual online date. For example, if a project is delayed by six months, duplicative backstop procurement would only provide system

benefit in the unlikely instance that a system emergency would require all capacity in the state including the marginal capacity.

6. How should the potential for a resource to fail to meet one trigger point, but then catch up and successfully met later trigger points, be addressed by the backstop mechanism? In your response, include a discussion of how to treat the costs associated with an IOU commencing backstop procurement for a resource that ultimately ends up being developed by the original LSE.

As indicated in Item 4, the Commission should consider delayed projects on a case-by-case basis and only order backstop procurement if the project's delays would realistically jeopardize system reliability. It is unreasonable to order duplicative procurement due to a project which has faced manageable, albeit unforeseen, delays which may be recoverable throughout the rest of the development process. For example, temporary supply chain issues (e.g., from COVID shutdowns) may delay projects but not cause them to fail, which would make ordering new procurement to "replace" delayed capacity unreasonable.

One approach would be to require an LSE with a delay to file a Tier 2 advice letter (due on the trigger date) requesting a later date and providing justification. This would provide some due process and could avoid some arbitrary decisions compared to doing it informally. This same requirement could be imposed on the IOU – both for bundled and backstop services. This filing may provide transparency needed to facilitate transactions among LSEs to ensure collective sufficiency.

7. For new generation or storage resources, according to the proposal, signed and approved contracts would be required on or before the first trigger point. This proposal contemplates that LSEs may seek to transact with one another by way of reassigning these contracts, up until the first trigger point (September 1, 2020), after which backstop procurement would commence to the extent that individual self-procuring LSEs' showings are short of their D.19-11-016 requirements. Is this date too early? If so, explain why and propose how the backstop mechanism should be modified.

D.19-11-016 accommodates reliance by one LSE on excess incremental procurement by another LSE in the event the latter LSE's project is delayed or investment is lumpy. The Energy Division Staff Frequently Asked Questions 3 explains:

> *Decision D.19-11-016 is silent on whether LSEs must directly contract for the resources they procure to meet their incremental resource procurement obligations. Consequently, staff believes that LSEs can use contracts for resources procured from other LSEs to meet their procurement obligations, provided the underlying resource meets the D.19-11-016 definition of an incremental resource (and, of course, provided that the LSE from which the resource was purchased backs the sold portion of the resource out of their own compliance showing).*

The ALJ Ruling also refers to these transactions in Milestone #1, requiring "good faith" progress on these types of resources. "Good faith" progress includes "descriptions of anticipated resources and negotiation status for other allowable resources not under contract by this milestone."[17]

Considering the Milestone #1 requirement of "good faith." the appropriate last chance to present an "excess" transaction with another LSE should be Milestone #2, on February 1, 2021, for the August 2021 tranche, as the ALJ Ruling contemplates. This enables an LSE with excess who has met its compliance obligation at Milestone #1 to contract with a procuring LSE from September through January.

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[17] ALJ Ruling at 5.

CalCCA also seeks further clarification regarding the following elements of excess transactions:

- ✓ **Transaction Form.** The contract may be either for procurement of the excess resources (i.e., MW or RA) or procurement by one LSE (Procuring LSE) of the right to claim the counterparty LSE's (Selling LSE) excess for compliance with procurement ordered in D.19-06-009; and
- ✓ **Counterparty Compliance Status.** Upon "return" of the excess by the Procuring LSE to the Selling LSE, the excess MW may be counted by the Selling LSE for compliance. For example, if a Procuring LSE procures rights to excess for purposes of 2021 compliance but then brings on a replacement resource for the 2022 compliance period, the Selling LSE may reclaim the excess for 2022 compliance.

8. Should an extension to one or more of the identified trigger points be allowed? If so, what criteria would need to be met to grant the extension and how long of an extension would be reasonable? Why?

The Commission should permit extensions on a case-by-case basis, considering the following information: (1) reason for delay; (2) feasibility of project / contract recovery from delay; (3) revised project timeline; and (4) potential for system reliability risk based on project delay. This could be accomplished through a Tier 2 advice letter requesting a specific extension of time and providing the factual support filed by the date of the corresponding milestone.

9. Are the steps regarding the communication and determination of procurement failure, and the direction to relevant IOUs to conduct backstop procurement, practical and feasible? If not, suggest improvements, including consideration of potential confidentiality issues.

As discussed above, the Commission should establish a formal process for LSEs to indicate a project delay or cancellation associated with each of the three milestones, to begin the process for delay review and consideration and, as necessary, trigger backstop procurement.

Information on the amount of backstop procurement required and on whose behalf the procurement is occurring should not be confidential. D.19-11-016 made public the procurement obligations placed on each LSEs with a very limited time for compliance. There is no reason that the backstop procurement obligations of the IOU on behalf of other LSEs deserves greater protection.

10. Should there be a deadline for IOUs to commence backstop procurement activities? If so, when and why?

No comment.

IV. CONCLUSION

For all the foregoing reasons, CalCCA respectfully requests consideration of the proposals specified herein and looks forward to an ongoing dialogue with the Commission and stakeholders.

Respectfully submitted,

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California Community Choice Association

July 22, 2020