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

Order Instituting Rulemaking to Continue  
Electric Integrated Resource Planning and  
Related Procurement Processes.

R.20-05-003

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION  
REPLY 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<sup>1</sup> (CalCCA) 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*.

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<sup>1</sup> California Community Choice Association represents the interests of 20 operational community choice electricity providers in California: Apple Valley Choice Energy, Baldwin Park Resident Owned Utility District, CleanPowerSF, Clean Energy Alliance, Clean Power Alliance, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, MCE, Monterey Bay Community Power, Peninsula Clean Energy, Pioneer Community Energy, Pico Rivera Innovative Municipal Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Silicon Valley Clean Energy, Solana Energy Alliance, Sonoma Clean Power, Valley Clean Energy, and Western Community Energy.

## I. INTRODUCTION

CalCCA replies to the opening comments submitted by Southern California Edison Company (SCE)<sup>2</sup> and Pacific Gas and Electric Company (PG&E)<sup>3</sup> on July 22, 2020, on cost allocation mechanisms and backstop procurement. CalCCA begins with a critical observation regarding cost allocation mechanisms. While SCE and PG&E propose recovering the costs of opt-out and backstop procurement from the *customers* of load-serving entities not satisfying their D.19-11-016 requirements, their comments highlight instead the reasons why these costs should be recovered directly from the *load-serving entities* (LSEs) serving those customers. Their explanations thus support CalCCA's proposal for investor-owned utilities (IOUs) to bill LSEs *directly* for opt-out and backstop procurement to ensure that LSEs remain responsible for the elections they make on behalf of their customers.

To address these and other issues presented by the PG&E and SCE comments, CalCCA recommends that the Commission:

- ✓ Adopt CalCCA's proposal to bill LSEs directly for the procurement undertaken by an IOU on behalf of the LSE's customers, rejecting proposals by SCE and PG&E to bill the costs to customers through a delivery charge.
- ✓ Adopt SCE's proposal to require IOUs to offer all RA, GHG-Free and RPS attributes of opt-out and backstop procurement to LSEs.
- ✓ Adopt SCE's tiered process for backstop procurement, *clarifying* that backstop load-serving entities (LSEs) may first procure excess incremental resources from other LSEs with excess resources and *directing* the IOUs to minimize the term of backstop procurement.
- ✓ Adopt SCE's proposal for a January 1, 2021, Milestone #1 backstop trigger point for Tranches 2 and 3 of procurement, rejecting PG&E's proposed 24-month trigger.

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<sup>2</sup> *Opening Comments of Southern California Edison Company (U 338-E) on Administrative Law Judge's Ruling Seeking Comments on Backstop Procurement and Cost Allocation Mechanisms*, July 22, 2020 (SCE Comments).

<sup>3</sup> *Response of Pacific Gas and Electric Company (U 39 E) to Administrative Law Judge's Ruling Seeking Comments on Backstop Procurement and Cost Allocation Mechanisms*, July 22, 2020 (PG&E Comments).

- ✓ Modify SCE's proposed material changes to milestone procedures to provide adequate notice of requirements.
- ✓ Reject proposals by SCE and PG&E requiring *full* backstop for any IOU that misses a trigger point for Tranche 1 procurement when that procurement is reasonably delayed and reasonably certain to come online.
- ✓ Reject PG&E's proposal to assign all bundled procurement in response to D.19-11-016 to the 2019 vintage.

## II. COST ALLOCATION MECHANISMS

### A. Adopt CalCCA's Proposal to Bill LSEs Directly for Opt-Out or Backstop Procurement on behalf of the LSE's Customers

CalCCA proposed that IOUs bill LSEs directly for opt-out or backstop procurement, rather than billing the LSEs' customers through another nonbypassable charge embedded in the IOUs' delivery charges.<sup>4</sup> While PG&E and SCE instead propose recovery from LSEs' customers, their explanations directionally support CalCCA's solution.

CalCCA explained that billing LSEs for the costs of procurement on their customers' behalf (1) is more consistent with the intent of D.19-11-016 to make procurement the responsibility of the LSE making the election; (2) gives all LSEs equal long-term financial responsibility for their procurement obligations; (3) minimizes distortions in presentation of generation charges in the customers' monthly bills; and (4) provides greater administrative ease. CalCCA observed that any perceived credit risk resulting from this approach could be addressed through credit and collateral provisions, socializing the cost in the event of insufficient collateral.

While PG&E and SCE propose to recover the costs directly from the customers of opt-out and backstop LSEs, their comments directionally support CalCCA's proposal.

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<sup>4</sup> CalCCA Comments at 5-8.

- ✓ Both SCE and PG&E recognize that the procurement is the *LSE*'s obligation.<sup>5</sup> In fact, PG&E refers to *LSE* cost responsibility<sup>6</sup> and concludes that the costs of procurement on behalf of opt-out LSEs should not follow their customers.<sup>7</sup>
- ✓ SCE acknowledges the competitive distortion in generation rate comparisons that will occur: "LSEs who do their own procurement would reflect all costs in their generation rates, while opt-out LSEs would presumably only reflect the System RA MPB costs (and/or RPS Adder MPB costs as applicable) in their generation rates since the IOUs would be billing the remaining net costs via delivery rates."<sup>8</sup>
- ✓ Both SCE and PG&E acknowledge the distortion in generation charges today on customers' bills;<sup>9</sup> rather than attempting to minimize the impact, however, they propose to further complicate and exacerbate the existing failure of bills to provide "apples to apples" generation cost comparison.<sup>10</sup>
- ✓ PG&E highlights the need for 12-24 months of billing system upgrades and modifications for backstop procurement.<sup>11</sup>
- ✓ SCE agrees with CalCCA that the LSE should enter into a standard contract with the IOU to support payment for RA or RPS attributes it receives, which would be secured by collateral that would pay off any net costs remaining in the event of default or bankruptcy.<sup>12</sup>

Billing LSEs correctly assigns cost responsibility for an LSE's procurement decisions and minimizes any competitive distortions and complexity. The Commission should for these reasons adopt CalCCA's recommendation.

**B. Adopt SCE's Proposal to Require IOUs to Offer All RA, GHG-Free and RPS Attributes of Opt-Out and Backstop Procurement to LSEs**

SCE proposes to offer all RA and RPS attributes to backstop and opt-out LSEs, and to allocate any GHG-free attributes to these LSEs.<sup>13</sup> If LSEs decline their share of RA or RPS

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<sup>5</sup> See, e.g., PG&E Comments at 8.

<sup>6</sup> See PG&E Comments at 13, 14 ("the Opt-Out LSE will be responsible for the full cost of any backstop procurement being recovered through BAM....").

<sup>7</sup> PG&E Comments at 16.

<sup>8</sup> SCE Comments at 35.

<sup>9</sup> See SCE Comments at 35; see PG&E comments at 15.

<sup>10</sup> SCE Comments at 35.

<sup>11</sup> PG&E Comments at 17-18.

<sup>12</sup> SCE Comments at 34.

<sup>13</sup> SCE Comments at 25-26.

attributes, the IOU may choose to retain the attributes for bundled customers or offer them to the market. CalCCA supports SCE’s proposal in these circumstances.<sup>14</sup>

PG&E, in stark contrast, proposes to retain all RPS and GHG-free attributes for bundled customers.<sup>15</sup> There is no justification for benefitting bundled customers with attributes paid for by opt-out or backstop LSEs or their customers, and PG&E’s proposal should be rejected.

### **III. BACKSTOP PROCUREMENT MILESTONES**

#### **A. Adopt SCE’s Tiered Process for Backstop Procurement with Clarifications**

SCE proposes a four-tiered process for backstop procurement.<sup>16</sup> First, the IOU will “use any excess resources already under contract with the IOU above its own procurement requirements” and the requirements of opt-out LSEs. Second, the IOU may expand existing contracts on a bilateral basis to meet the backstop procurement need. Third, the IOU may consider bilateral agreements with previously bid but unsuccessful projects. Finally, the IOU may conduct a separate solicitation.

CalCCA generally supports this approach as it carries the potential to minimize the overall costs of procurement in response to D.19-11-016, subject to two clarifications. The Commission should provide that if an LSE defaults to backstop procurement, it should be first given an opportunity to procure compliance resources from other *non-IOU* LSEs before the IOU allocates its own resources. It should also minimize the term of any allocation of excess resources or solicitation if backstop is required as a result of delay, rather than a complete failure to procure.

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<sup>14</sup> CalCCA notes, however, that this approach may not be reasonable in other contexts, such as allocations of Power Charge Indifference Adjustment portfolio benefits.

<sup>15</sup> PG&E Comments at 15.

<sup>16</sup> SCE Comments at 17.

**B. Adopt a January 1, 2021, Milestone #1 Backstop Trigger Point for All Tranches**

SCE proposes to set the Milestone #1 backstop trigger for Tranches 2 and 3 at January 1, 2021, to provide adequate time for backstop procurement.<sup>17</sup> CalCCA supports this approach as a clearer approach than PG&E's proposed 24-month lead time, which leaves ambiguity around the trigger date for Tranche 2 procurement.<sup>18</sup> While CalCCA appreciates the sincerity of PG&E's efforts to ensure incremental capacity is brought online, it is unreasonable to force LSEs to conclude all procurement 24 months prior to the compliance deadline. As PG&E notes, 24 months represents an aggressive time frame for new resource development *including solicitation, project consideration, contract approval and financing*. LSEs may be several months away from a signed contract while still on track to bring new resources online in time for the compliance deadline. The overlap of incremental procurement with Once-Through-Cooling fossil resource extensions creates a sufficient buffer which provides several additional months (if not 1-2 years) of procurement runway for IOUs to backstop LSE shortfalls.

At this point, however, adopting a September 1, 2020, Milestone #1 trigger point for procurement scheduled to be online on August 1, 2021, is no longer reasonable. SCE has proposed significant changes to the milestone procedures that deviate from the initial proposal provided in the June 5, 2020, Ruling. These changes, if adopted, would require re-negotiation of already executed contracts or changes to contracts deep in negotiations, all of which would have to be accomplished in less than a month's time. Moreover, since a decision on these important questions cannot be issued until after September 1, application of this Milestone #1 as proposed by SCE would be retroactive and provide insufficient notice to enable compliance. For this

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<sup>17</sup> SCE Comments at 6.

<sup>18</sup> See PG&E Comments at 2 and 5.

reason, the Commission should set Milestone #1 for Tranche 1 for January 1, 2021, along with the other two tranches, and limit the application of SCE's refinements to contracts executed following the date of the final decision.

**C. Modify SCE's Material Proposed Changes to the Milestone Procedures to Provide Adequate Notice of Requirements**

SCE proposes substantial changes to the Ruling's proposed milestone procedures and adopting this detail without adequate notice and greater clarity would undermine LSEs' ability to comply. Thus, in addition to shifting Milestone #1 to January 1, 2021 for all Tranches, CalCCA seeks refinement of SCE's proposed changes as described below.

**1. Resource Milestone #1**

SCE's proposal augments the contracting requirement to require that contracts for new construction "should not be at seller's option or include other **similar terms that allow for easy cancellation.**"<sup>19</sup> This limitation could be interpreted broadly towards the termination provisions in a power purchase agreement. "Easy cancellation" has no definition. Moreover, developers can typically "cancel" or terminate a project if they are comfortable forfeiting their development security posting (usually millions of dollars, depending on the project's size and terms in contract) to the buyer. This "easy cancellation" qualification should not be adopted. Including compliance requirements that mandate specific contractual terms at this stage of the procurement process (i.e., nearly a year after LSEs have begun commercial negotiations and/or executed agreements with counterparties) is inappropriate. If the Commission chooses to adopt the qualification, however, this term must be clearly defined and include examples further clarifying what types of contractual provisions the CPUC would deem non-compliant with this

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<sup>19</sup> SCE Comments at 8.

requirement. LSEs must also then be given sufficient time to address the newly adopted requirement, which would further support a delayed Milestone #1 for Tranche 1 procurement.

SCE further adds the requirement for Milestone #1 that contracts for new construction must be for a “commercially proven technology.” Again, LSEs have received insufficient notice of this potential compliance requirement. Moreover, this term is vague and undefined, and no guidance is provided on what documentation would suffice to demonstrate that a technology is commercially proven. Such a requirement also risks discouraging procurement of newer, desirable technologies. For example, are flow batteries commercially proven? Would SCE’s IceBear behind-the-meter technology have met the test when contracted? Finally, this requirement would be very problematic if it were to exclude resources already contracted or nearing execution. CalCCA recommends the Commission not adopt this requirement.

Finally, SCE proposes to require in Milestone #1 that contracts have a “demonstrated path to FCDS by the required online date.” CalCCA notes that some projects may only receive Partial Capacity Deliverability Status (PCDS), and requests that projects should still be counted as incremental resource capacity to the extent of their PCDS.

## **2. Resource Milestone #2**

As CalCCA noted in its initial comments “a Notice to Proceed” (NTP) is a notice between a developer and an Engineering, Procurement and Construction contractor determining the date on which work may commence. PPAs do not typically include a requirement for developers to submit NTP documentation to the buyer or LSE. Instead, most PPAs require that the developer submit an executed “Construction Start Date Certificate” or similar affidavit certifying that NTP has been issued and construction of the facility has occurred. CalCCA suggests that the NTP milestone requirement should also be able to be fulfilled by submission of an executed Construction Start Date Certificate or similar contractually-required affidavit.

SCE also proposes in Milestone #2 a requirement that identification of a “Fatal Flaw” will trigger immediate backstop procurement.<sup>20</sup> Once again, “fatal flaw” lacks definition and could create uncertainty in the compliance process. A bankruptcy, for example, would be a clear and unambiguous example of a fatal flaw. If issues are identified due to interconnection or transmission upgrade delays, permitting delays, or Force Majeure, most standard contracts give a “permitted extension” for these delays that are outside the control of both seller and buyer and would not be cause for contract termination. Permitted extensions for these types of circumstances can be twice as long, or more, than SCE’s proposed 90-day Force Majeure exception. These types of issues should not be considered “fatal flaws.” Likewise, COVID-19 delays should not be considered “fatal flaws.” Consequently, if the Commission introduces the “fatal flaw” concept proposed by SCE explicitly into the milestone procedures, it should be very limited to unambiguous failures.

### **3. Resource Milestone #3**

SCE proposes a 90-day remediation period for failing to meet Milestone #3 for Tranche 1 procurement, but limits remediation for Tranches 2 and 3 to only 30 days.<sup>21</sup> SCE argues that “[a] shorter remediation period is appropriate for Tranche 2 and 3 procurement than Tranche 1 because LSEs will have significantly more time to meet the August 1, 2022 and August 1, 2023 online dates than they had to meet the August 1, 2021 online date.” While SCE’s statement that LSEs will have a longer time to meet the online dates may be generally true, all projects differ, and there may be issues that arise that require more than 30 days to remedy. Moreover, SCE has not adequately justified this compression, omitting any explanation of whether and how failure to meet Milestone #3 for Tranches 2 and 3 places the IOU in a worse position than with Tranche 1.

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<sup>20</sup> SCE Comments at 15.

<sup>21</sup> *Id.* At 15-16.

Without more justification, a 90-day remediation period should be adopted for Milestone #3 for all Tranches.

**D. Require Full Backstop Procurement Only When an LSE Materially Fails to Meet Its Milestones**

SCE recommends that the Milestone #1 trigger point for backstop procurement for Tranche 2 and 3 procurement be set at January 1, 2021.<sup>22</sup> If this milestone is not met, the IOU would begin backstop procurement.<sup>23</sup> PG&E similarly suggests that if the LSE misses any Milestone, the IOU should commence backstop for all years' requirements.<sup>24</sup>

CalCCA agrees that, in some cases, this may be reasonable, such as if an LSE fails to make any good faith efforts to procure or its efforts are clearly deficient. Materiality, however, is a critical consideration. If, for example, an LSE misses Milestone #1 for 20% of its requirement due to a reasonable delay, it would be unreasonable to penalize the LSE with full backstop procurement for all requirements for all years. The Commission thus should make clear that full backstop procurement will be triggered for LSEs that materially fail to meet Milestone #1. The trigger should occur only if, after prompt discussion with the LSE, the Commission determines the LSE is unlikely to bring its planned resources online in the reasonably foreseeable future.

**IV. OTHER ISSUES**

**A. Reject PG&E's Proposal to Assign All Bundled Procurement in Response to D.19-11-016 to the 2019 Vintage**

PG&E proposes to assign bundled customer procurement cost responsibility 100% to the 2019 vintage "because the procurement quantities were allocated based on the load share in that

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<sup>22</sup> SCE Comments at 22.

<sup>23</sup> SCE Comments at 6.

<sup>24</sup> PG&E Comments at 8.

year and for the existing LSEs in that year (e.g., new or expanding LSEs may not have been accounted for in the Decision).”<sup>25</sup> It claims this is a “minor” change. In fact, it is a significant departure from D.19-11-016, which is not proposed by SCE or San Diego Gas & Electric Company (SDG&E), both of whom instead propose to adhere to the direction in D.19-11-016 to collect these costs from departed load via the same approach used to collect from opt-out LSEs. The Commission soundly rejected this proposal in D.19-11-016, and neither SDG&E nor SCE offers a similar proposal. The Commission should reject PG&E’s proposal to place all of its procurement track costs in the 2019 PCIA vintage.

The Commission considered vintaging in D.19-11-016 in response to a proposal from SDG&E.

We also clarify that the capacity procured by the IOUs in response to this decision will be allocated on a non-bypassable basis through a modified CAM mechanism and not PCIA. In other words, we will not reduce the cost allocation amounts to be recovered by the IOUs after load migrates. Thus, we do not make the modifications suggested by SDG&E, in its comments, to account for load migration before or after the CCA or ESP elects whether it will self-provide, or for PCIA vintaging.<sup>26</sup>

Moreover, D.19-11-016 does not support PG&E’s conclusion that the allocations were based on 2019 load shares, without adjustment for then-anticipated departing load. Indeed, the Commission “utilized the 2020-year ahead forecasts for resource adequacy capacity” to allocate load shares by class of LSE.<sup>27</sup>

Finally, even if PG&E’s factual contention regarding forecast shares were correct, to grant PG&E’s request would place CCAs at a disadvantage from the outset. The IOUs would effectively be permitted to adjust their allocations by moving any excess allocation to already-

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<sup>25</sup> PG&E Comments at 12-13.

<sup>26</sup> D.19-11-016 at 67.

<sup>27</sup> D.19-11-016 at 40.

departed load, while CCAs would be forced to charge their customers for any noise in the allocation process.

The Commission should reject PG&E's proposal and, instead, employ the compliant methodologies proposed by SCE and SDG&E.

**V. CONCLUSION**

For all of the foregoing reasons, CalCCA requests that the Commission adopt the recommendations herein and in CalCCA's opening comments.

Respectfully submitted,



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August 7, 2020