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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'S  
COMMENTS ON THE PROPOSED DECISION ESTABLISHING PROCESS FOR  
BACKSTOP PROCUREMENT REQUIRED BY DECISION 19-11-016**

Evelyn Kahl, General Counsel  
California Community Choice Association  
One Concord Center  
2300 Clayton Road, Suite 1150  
Concord, CA 94520  
(415) 254-5454  
[regulatory@cal-cca.org](mailto:regulatory@cal-cca.org)

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## SUMMARY OF RECOMMENDATIONS

The California Community Choice Association recommends the following modifications of the proposed decision:

- Establish clear evaluation criteria for Commission staff to consider in weighing whether to bring a resolution forward ordering backstop procurement.
  - Establish a clear linkage between potential enforcement actions and LSE showing evaluation criteria.
  - Establish a procedure where a declaration would be used as evidence of compliance with Milestone 1 for resources acquired by contract.
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The California Community Choice Association (CalCCA)<sup>1</sup> submit these comments pursuant to Rule 14.3 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure on the November 13, 2020 proposed *Decision Establishing Process for Backstop Procurement Required by Decision 19-11-016* (PD).

**I. INTRODUCTION**

The PD adopts a balanced approach to ensure new resources ordered under Decision (D.) 19-11-016 are developed and interconnected in a timely manner. CalCCA generally supports the framework proposed in the PD, and notes the PD's intent to allow staff discretion prior to triggering backstop procurement or enforcement actions as a reasonable and prudent approach in light of the wide range of potential causes and magnitudes of resource delays or cancellation.

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<sup>1</sup> California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Baldwin Park Resident Owned Utility District, CleanPowerSF, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Silicon Valley Clean Energy, Solana Energy Alliance, Sonoma Clean Power, Valley Clean Energy, and Western Community Energy.

CalCCA offers the following recommendations to enhance the PD and, to the extent practical, establish clear up-front expectations for self-procuring LSEs:

- Establish clear evaluation criteria for Commission staff to consider in weighing whether to bring a resolution forward ordering backstop procurement.
- Establish a clear linkage between potential enforcement actions and LSE showing evaluation criteria.
- Establish a procedure where a declaration would be used as evidence of compliance with Milestone 1 for resources acquired by contract.

While CCAs are actively working with their counterparties to ensure projects meet their intended Commercial Online Dates (COD), it is well understood that some fraction of projects in any procurement round will inevitably face delays or even cancellation. It is likely that the impacts of novel coronavirus (COVID) pandemic on supply chain, land use permitting, construction, interconnection, and other project phases may heighten this risk, though the degree of COVID-related impacts is not yet known. CalCCA looks forward to continuing its coordination with Commission staff to identify and mitigate these impacts to the extent they arise.

Despite the best efforts of both LSEs and developers, external factors may significantly influence the timely delivery of projects. These may include:

- Availability or deliverability of necessary materials, infrastructure, or other materials resulting from stay-at-home orders, import restrictions, or other COVID-related limitations.<sup>2</sup>
- Delays in permitting resulting from stay-at-home orders, social distancing requirements, or other COVID-related safety measures reducing the capacity of local and state government agencies responsible for permitting.<sup>3</sup>

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<sup>2</sup> Protect Global Supply Chains for Low-Carbon Technologies, *Nature*.  
<https://www.nature.com/articles/d41586-020-02499-8>.

<sup>3</sup> Permitting Options for Solar Installations During the COVID-19 Outbreak;  
<https://www.seia.org/research-resources/permitting-options-solar-installations-covid19>.

- Unforeseen permitting challenges, such as changes to the protected status of certain species under the California Endangered Species Act, which was recently undertaken for the western Joshua tree (*Yucca brevifolia*).<sup>4</sup>
- Delays in interconnection resulting from stay-at-home orders, social distancing requirements, or other COVID-related safety measures reducing the capacity of utility and Independent System Operator teams responsible for interconnection.

In addition to the significant lead time involved with initiating a new backstop procurement order, the potential delays listed above would not easily be remedied by backstop procurement. In fact, in the context of permitting and interconnection delays, it is likely that backstop procurement would be even further backlogged *behind* the in-process, though h delayed, procurement. Consequently, there are relatively few scenarios for which a project delay should rationally initiate new backstop procurement, echoing the PD’s comments regarding “minor delays or other obstacles.”<sup>5</sup>

## **II. THE COMMISSION SHOULD EXPAND ITS CRITERIA FOR EVALUATING LSE SHOWINGS IN CONSIDERING BACKSTOP PROCUREMENT**

CalCCA supports the PD’s approach of providing Commission staff discretion prior to ordering backstop procurement and agrees with the explicit criteria identified for consideration in the PD.<sup>6</sup> However, while the PD identifies criteria for evaluating LSE submissions, it is less obvious what criteria staff may use in determining whether, after evaluating the submissions, backstop procurement should be ordered. Specifically, the Commission should outline criteria used to inform staff discretion on the decision to order procurement, such as:

- Whether a project has a reasonable path to ultimate completion, despite delay.
- Whether a project delay is likely to trigger reliability deficiencies.

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<sup>4</sup> California Fish and Game Commission Notice of Receipt of Petition; <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=175217&inline>.

<sup>5</sup> PD at 13.

<sup>6</sup> PD at 19.

- Whether newly ordered backstop procurement could reasonably be expected to come online prior to the delayed project.

These evaluation criteria would help inform Commission staff's decision to bring forth a resolution ordering backstop procurement. Providing clear criteria would also provide guidance for LSEs and developers. While backstop procurement is an important tool for use in the event LSEs fail to successfully contract for necessary resources, or contracted resources fail, it should be viewed as a last resort in the context of resource delays.

### **III. THE COMMISSION SHOULD LINK POTENTIAL OTHER ENFORCEMENT ACTIONS TO EVALUATION CRITERIA**

Given the severe financial, operational, other impacts of backstop procurement on a deficient LSE, the PD proposes an alternate approach of exploring "compliance and/or enforcement actions" on deficient LSEs in lieu of ordering backstop procurement. Given the inevitability of delay and/or cancellation of some subset of procurement ordered by D.19-11-016 and the reality that the majority of delays and cancellations arise due to conditions beyond the control of LSE and developer, enforcement actions should only be considered if the delay or cancellation clearly lies within the control of one or both parties.

As discussed above, there are myriad causes for project delay and cancellation, many of which are exacerbated by the impacts of COVID. Of particular note, CalCCA is concerned that delays in the interconnection process may result in a project missing its COD, which is not a process controlled by individual LSEs. Given the significant number of new projects all targeting online dates on or before the compliance deadlines, it is likely that IOU interconnection teams may accrue an interconnection backlog resulting in delays beyond the control of the self-procuring LSE. This is but one of many circumstances under which it would not be prudent to undertake an enforcement action against the LSE.

**IV. THE COMMISSION SHOULD PERMIT RELIANCE ON AN EXECUTIVE DECLARATION FOR CONTRACTED RESOURCES RATHER THAN THE SPECIFIED DOCUMENTS IDENTIFIED IN MILESTONE 1**

The Commission should streamline Milestone 1 by requesting that LSEs submit a declaration from an executive stating that the LSEs holds a signed contract with a developer, that an interconnection agreement for the project in question exists, and that there are signed land leases or title deeds for the project in place. LSEs would submit this declaration along with a project timeline instead of the actual contract, interconnection agreement, and signed land leases or title deeds. The contracts and interconnection agreements are complex documents that are hundreds of pages long and in many cases cannot be shared without involving the counterparties. Thus, replacing the filing of actual contracts and agreements for each project that an LSE intends to use to meet its procurement obligation under D.19-11-016 with a declaration would refine Milestone 1 and facilitate Commission staff's review of the milestone.

**V. CONCLUSION**

CalCCA appreciates the opportunity to submit these comments and requests adoption of the recommendations proposed herein. For all the foregoing reasons, the Commission should modify the proposed decision as provided in Appendix A.

Respectfully submitted,



Evelyn Kahl  
General Counsel to the  
California Community Choice Association

December 3, 2020

**APPENDIX A**  
**PROPOSED CHANGES TO FINDINGS OF FACT, CONCLUSIONS OF LAW**  
**AND ORDERING PARAGRAPHS**

**FINDINGS OF FACT**

**NEW Finding.** In the case of contracted, presenting source documentation maintained by the project developer to the Commission to demonstrate fulfillment of the milestones creates a greater challenge than owned resources due to contract provisions limiting availability and disclosure of confidential information.

**CONCLUSIONS OF LAW**

**NEW Conclusion of Law.** Commission staff should develop and make available to all LSEs clear evaluation criteria that will guide the staff's consideration in weighing whether to bring a resolution forward ordering backstop procurement.

**NEW Conclusion of Law.** Enforcement actions should be clearly linked by Commission staff to the evaluation criteria guiding its determination of the need for backstop procurement.

**NEW Conclusion of Law.** A declaration from an executive that an LSE's project has met the relevant development milestones established by the Commission provides sufficient assurance of compliance when the underlying documents to demonstrate compliance are subject to contract provisions precluding disclosure of such documents.

**ORDERING PARAGRAPHS**

2. When making the compliance filings required in Ordering Paragraph 1 above, all load-serving entities subject to the requirements of Decision 19-11-016 who did not opt out of providing capacity for their customers shall include ~~information~~ direct evidence or a declaration from an executive addressing each of the following milestones for each of the three years of the capacity requirements (2021, 2022, and 2023):

Milestone 1: a signed contract with a resource developer for provision of commercial technology, an interconnection agreement with a demonstrated path toward deliverability by the required online date, signed land leases or title deeds demonstrating project site control, and a project timeline. This milestone may also show intended procurement from demand response resources, as well as allowable imports.

Milestone 2: a showing of a "notice to proceed" or similar contractual evidence of construction commencement for new construction projects, as well as executed contracts for demand response, imports, or sales of excess resources between LSEs.

Milestone 3: evidence of a project being online and capable of delivering energy, or in the case of demand response, load reduction.

**NEW Ordering Paragraph.** In advance of LSEs making compliance filings required in Ordering Paragraph 1, Commission staff shall make available to LSEs a list of evaluation criteria that will be considered in evaluating the need for backstop procurement. Any enforcement action shall be tied directly to the ability of an LSE to meet the evaluation criteria.