

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



FILED

10/06/22

04:27 PM

R2005003

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

R.20-05-003

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S
REPLY COMMENTS ON SECTION 2 OF THE ADMINISTRATIVE LAW JUDGE'S
RULING SEEKING COMMENTS ON POTENTIAL NEAR-TERM ACTIONS TO
ENCOURAGE ADDITIONAL PROCUREMENT**

Evelyn Kahl,
General Counsel and Director of Policy
Leanne Bober,
Senior Counsel
CALIFORNIA COMMUNITY CHOICE
ASSOCIATION
One Concord Center
2300 Clayton Road, Suite 1150
Concord, CA 94520
Telephone: (415) 254-5454
E-mail: regulatory@cal-cca.org

October 6, 2022

TABLE OF CONTENTS

| | | |
|------|---|----|
| I. | INTRODUCTION | 1 |
| II. | MODIFICATIONS TO EXISTING PROCUREMENT REQUIREMENTS AND ADOPTION OF A FRAMEWORK FOR EXTENSIONS OF TIME FOR COMPLIANCE WILL ENCOURAGE LSES TO CONTINUE WITH SUCCESSFUL PROCUREMENT IN A DIFFICULT MARKET | 3 |
| A. | Modifications to the 2019 Order and MTR Order Requirements Will Provide Compliance Flexibility While Advancing Commission Reliability and GHG Goals | 4 |
| B. | A Modified Version of SCE’s Penalty Waiver Proposal Should Be Adopted Through a 12-Month MTR Compliance Extension Framework Based on an LSE’s Good Faith Showing | 6 |
| III. | MODIFICATIONS TO BASELINE INCREMENTAL PROCUREMENT OBLIGATIONS MUST INCORPORATE ADEQUATE TIME FOR LSE PROCUREMENT AND CLEAR COUNTING RULES | 9 |
| IV. | CONCLUSION..... | 11 |

SUMMARY OF RECOMMENDATIONS

- The California Public Utilities Commission (Commission) should adopt party proposals to clarify and modify compliance and resource requirements in the 2019 and Mid-term Reliability (MTR) Orders that align with the Commission’s reliability and green-house gas (GHG) reduction goals, while encouraging successful procurement of resources, including:
 - California Community Choice Association’s (CalCCA’s) proposals in Opening Comments to (1) allow trading of compliance obligations, and (2) allow projects without a California Independent System Operator (CAISO) deliverability study to temporarily count for compliance;
 - Alliance for Retail Energy Markets’ (AREM’s) proposal to move the compliance deadlines currently set for August 1, 2023 and June 1, 2024 and 2025 to September 1 of each year to accommodate short delays in bringing projects online;
 - Sonoma Clean Power’s (SCP’s) and Redwood Coast Energy Authority’s (RCEA’s) proposal to allow intra-load-serving entity (LSE) trades of one year of eligible capacity to allow parties to remain compliant while waiting for projects to come online;
 - The proposal of various community choice aggregator (CCA) parties to allow pseudo-tied or dynamically scheduled imports without maximum import capability (MIC) that have achieved their commercial operation date (COD) by the required deadline to be considered compliant;
 - Proposals by SCP/RCEA and Silicon Valley Clean Energy (SVCE) that the pool of eligible zero-emitting resources for MTR Order compliance should be clarified and/or expanded;
 - Southern California Edison Company’s (SCE’s) proposal that an energy storage resource’s derated nameplate capacity should count toward the MTR long-duration storage requirements; and
 - Crediting LSEs for compliance purposes toward the 2019 and MTR Orders for repowered resources, as proposed by SVCE.
- The Commission should adopt a modified version of SCE’s penalty waiver proposal through a 12-month MTR compliance extension framework based on an LSE’s good faith showing.
- To the extent modifications are made to the baseline incremental procurement obligations:
 - PG&E’s recommendation that the Commission issue any LSE obligations by the end of the first quarter of 2023 should be adopted;

SUMMARY OF RECOMMENDATIONS, continued

- Any new obligations should not be required to come online until 2026 or later, as proposed by PG&E, Clean Power Alliance (CPA), Peninsula Clean Energy (PCE), and SCP/RCEA;
- The Commission should adopt SCE's proposal regarding net qualifying capacity (NQC) counting methodologies for the incremental procurement obligations.

**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
REPLY COMMENTS ON SECTION 2 OF THE ADMINISTRATIVE LAW JUDGE'S
RULING SEEKING COMMENTS ON POTENTIAL NEAR-TERM ACTIONS TO
ENCOURAGE ADDITIONAL PROCUREMENT**

The California Community Choice Association¹ (CalCCA) submits these Reply Comments (Reply Comments) in response to the *Administrative Law Judge's Ruling Seeking Comments on Staff Paper on Procurement Program and Potential Near-Term Actions to Encourage Additional Procurement* (Ruling), issued on September 8, 2022. CalCCA's Reply Comments respond to the September 26, 2022 party Opening Comments on near-term actions the California Public Utilities Commission (Commission) can take to encourage additional procurement.²

I. INTRODUCTION

The Ruling, as well as party Opening Comments, accurately portray the challenges faced by load-serving entities (LSEs) to timely bring resources online to comply with Decision (D.)

¹ California Community Choice Association represents the interests of 23 community choice electricity providers in California: Apple Valley Choice Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Orange County Power Authority, 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, Santa Barbara Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

² All references herein to party Opening Comments are to the September 26, 2022 Comments filed in this Rulemaking (R.) 20-05-003.

19-11-016³ and D.21-06-035.⁴ Party Opening Comments also reflect the difficult market conditions LSEs face given supplier awareness of the strict compliance obligations and potential penalties for non-compliance. Southern California Edison Company (SCE) notes market power exercised by suppliers during contract negotiations resulting from the potential penalties faced by LSEs for delays.⁵ The Alliance for Retail Energy Markets (AReM) notes potential increased costs to customers for penalties for delays over which LSEs have no control.⁶

Given the difficult market conditions, the Opening Comments provide various proposals to remove barriers to resource procurement and to encourage viability of projects in development. CalCCA takes no position on the Ruling's proposal concerning modifications to the 2019 Order and MTR Order baselines. Instead, and as set forth more fully below, CalCCA recommends that:

- The Commission should adopt party proposals to clarify and modify compliance and resource requirements in the 2019 and MTR Orders that align with the Commission's reliability and green-house gas (GHG) reduction goals, while encouraging successful procurement of resources, including:
 - CalCCA's proposals in Opening Comments to (1) allow trading of compliance obligations, and (2) allow projects without a California Independent System Operator (CAISO) deliverability study to temporarily count for compliance;
 - AReM's proposal to move the compliance deadlines currently set for August 1, 2023 and June 1, 2024 and 2025 to September 1 of each year to accommodate short delays in bringing projects online;
 - Sonoma Clean Power's (SCP's) and Redwood Coast Energy Authority's (RCEA's) proposal to allow intra-LSE trades of one year of eligible capacity to allow parties to remain compliant while waiting for projects to come online;

³ D.19-11-016, *Decision Requiring Electric System Reliability Procurement for 2021-2023*, R.16-02-007 (Nov. 7, 2019) (2019 Order).

⁴ D.21-06-035, *Decision Requiring Procurement to Address Mid-Term Reliability (2023-2026)*, R.20-05-003 (June 24, 2021) (MTR Order).

⁵ SCE Comments at 10-11.

⁶ AReM Comments at 7-8.

- The proposal of various community choice aggregator (CCA) parties to allow pseudo-tied or dynamically scheduled imports without maximum import capability (MIC) that have achieved their commercial operation date (COD) by the required deadline to be considered compliant;
 - Proposals by SCP/RCEA and Silicon Valley Clean Energy (SVCE) that the pool of eligible zero-emitting resources for MTR Order compliance should be clarified and/or expanded;
 - SCE's proposal that an energy storage resource's derated nameplate capacity should count toward the MTR Order long-duration storage requirements; and
 - Crediting LSEs for compliance purposes toward the 2019 and MTR Orders for repowered resources, as proposed by SVCE.
- The Commission should adopt a modified version of SCE's penalty waiver proposal through a 12-month MTR Order compliance extension framework based on an LSE's good faith showing.
 - To the extent modifications are made to the baseline incremental procurement obligations:
 - Pacific Gas and Electric Company's (PG&E's) recommendation that the Commission issue any LSE obligations by the end of the first quarter of 2023 should be adopted;
 - Any new obligations should not be required to be online until 2026 or later, as proposed by PG&E, Clean Power Alliance (CPA), Peninsula Clean Energy (PCE), and SCP/RCEA; and
 - The Commission should adopt SCE's proposal regarding net qualifying capacity (NQC) counting methodologies for the incremental procurement obligations.

II. MODIFICATIONS TO EXISTING PROCUREMENT REQUIREMENTS AND ADOPTION OF A FRAMEWORK FOR EXTENSIONS OF TIME FOR COMPLIANCE WILL ENCOURAGE LSES TO CONTINUE WITH SUCCESSFUL PROCUREMENT IN A DIFFICULT MARKET

The Commission should adopt various party proposals to encourage successful procurement by LSEs despite the multiple barriers detailed in the Ruling. First, by modifying (or in some cases clarifying) existing compliance and resource requirements set forth in the 2019 and MTR Orders, the Commission can encourage additional procurement while still advancing its reliability and GHG goals. Second, the Commission should adopt a framework to allow

extensions of time for compliance with the MTR Order in the event circumstances outside of an LSEs' control cause project delays, to allow LSEs to avoid backstop procurement and potential penalties. Importantly, the proposals set forth herein can potentially calm the market by reducing supplier market power and reduce potential costs to customers by preventing significant penalties imposed on LSEs.

A. Modifications to the 2019 Order and MTR Order Requirements Will Provide Compliance Flexibility While Advancing Commission Reliability and GHG Goals

Modifications to the 2019 Order and MTR Order compliance and resource requirements presented in Opening Comments should be adopted by the Commission to encourage successful resource procurement in the difficult market environment. Parties recommend several modifications that will clarify and/or relax the 2019 Order and MTR Order requirements, while still advancing the Commission's reliability standards and commitment to GHG emissions reduction targets. CalCCA recommends first that the Commission adopt its recommendations set forth in its Opening Comments to (1) allow trading of compliance obligations, and (2) allow projects without a deliverability study to temporarily count for compliance.⁷ CalCCA also recommends that the Commission adopt each of the party recommendations set forth below.

First, CalCCA recommends Commission adoption of AReM's recommendation to move the MTR compliance deadlines currently set for August 1, 2023 and June 1, 2024 and 2025 to September 1 of each year.⁸ This short "grace period" will allow counterparties to work out very short delays without compromising other financial incentives that developers have to get resources on as soon as possible.

⁷ CalCCA Opening Comments at 9-12.

⁸ AReM Opening Comments at 9.

Second, the Commission should allow for intra-LSE trades of one year of eligible capacity, as proposed by SCP/RCEA.⁹ As SCP/RCEA note, this provision will reward LSEs that exceed compliance obligations. In addition to CalCCA's recommendation to allow trades of compliance obligations, intra-LSE trading will allow parties to remain compliant while waiting for projects to come online.

Third, the Commission should adopt the proposal of various CCA parties to allow pseudo-tied or dynamically scheduled imports without MIC that have achieved COD by the required deadlines to be considered compliant.¹⁰ Such compliance should hinge on an LSE demonstrating its good faith efforts to secure MIC through the CAISO MIC expansion process, through the annual elections and long-term reservations.

Fourth, the Commission should adopt the recommendations of SCP/RCEA and SVCE that the pool of eligible zero-emitting resources for MTR compliance be clarified and/or expanded. Specifically, the Commission should adopt:

- SCP/RCEA's recommendation to:
 - remove the requirement that generation and storage resources be co-located or contractually bound, but rather allow an LSE that contracts for two or more separate resources that provide the capabilities required by the zero-emitting category to be applied together, using the latest contract start date, as a composite in satisfying the requirement.¹¹
- SVCE's recommendation to allow LSEs to:
 - separately procure energy and batteries so long as the energy is deliverable to the system, and

⁹ SCP/RCEA Opening Comments at 8.

¹⁰ *Id.* at 7; PCE Opening Comments at 3; CCSF Opening Comments at 4-5; SVCE Opening Comments at 5-6.

¹¹ SCP/RCEA Opening Comments at 6-7.

- count hybrid resources for which it may not contract the energy directly but where the energy is otherwise not used for MTR compliance and has economic incentives to charge the battery and dispatch during peak hours.¹²

Fifth, the Commission should adopt SCE’s recommendation that an energy storage resource’s derated nameplate capacity that can be discharged for eight hours count toward the MTR long-duration storage requirements.¹³ SCE requests, for example, that in the case of a four-hour resource with 100 megawatts (MW) nameplate, that an LSE can count the resource’s derated 50 MW capacity with the resource discharge for eight hours.

Finally, the Commission should adopt SVCE’s recommendation that the Commission clarify that LSEs can be credited for compliance purposes toward D.19-11-016 and D.21-06-035 for repowered resources.¹⁴ CalCCA agrees that such resources, for which LSEs are investing significant capital to overhaul and improve, should be counted for compliance with the 2019 and MTR Orders.

By adopting these proposals, the Commission can provide additional flexibility for LSEs to comply with the 2019 and MTR Orders, while still advancing its GHG or reliability goals. Such flexibility may allow LSEs to include resources not previously compliant with these Orders.

B. A Modified Version of SCE’s Penalty Waiver Proposal Should Be Adopted Through a 12-Month MTR Compliance Extension Framework Based on an LSE’s Good Faith Showing

In the event procurement under the MTR Order is delayed for reasons beyond an LSE’s control, the Commission should adopt a framework building on SCE’s proposal to waive penalties that will give an LSE a twelve-month compliance extension. Such an extension will be

¹² SVCE Opening comments at 6.

¹³ SCE Opening Comments at 11-12.

¹⁴ SVCE Opening Comments at 5.

accompanied by a delay of backstop procurement and waiver of penalties, based on an LSE's "good faith effort" showing.

SCE proposes that the Commission:

explicitly find that it will not assess penalties on an LSE whose procurement was delayed for reasons beyond its control, so long as the LSE took commercially reasonable steps to contract with resources and included commercially reasonable terms in its contracts such as (but not limited to) reasonable credit and collateral terms, sufficient failure to deliver penalties, and other contractual requirements that properly incent performance.¹⁵

CalCCA agrees with SCE's general request that penalties should be waived for delays outside the control of an LSE. However, SCE fails to provide further details as to how the Commission should address the corresponding backstop procurement, and the potential duplicative procurement that can occur once an LSE's (delayed) planned project comes online. As a result, CalCCA recommends that the Commission adopt the following framework for extensions of time for compliance and backstop procurement, and a corresponding waiver of penalties, for delays in meeting milestone compliance dates under the MTR Order.¹⁶

First, an LSE will submit a request to the Commission's Executive Director for extension of time to comply prior to an MTR compliance deadline. The request will demonstrate an LSE's "good faith efforts" to comply and to bring its required capacity online given the "totality of the circumstances" as required by Resolution M-4846. "Good faith efforts" may include the factors

¹⁵ SCE Opening Comments at 10.

¹⁶ While the Commission provides such a framework for extensions of time to comply with the 2019 Order compliance obligations in D.20-12-044, the 2019 Order does not incorporate penalties for noncompliance. See D.20-12-044, *Decision Establishing Process for Backstop Procurement Required by Decision D.19-11-016*, R.20-05-003 at 12-21 (Dec. 17, 2020) (outlining milestones for LSEs to demonstrate compliance and avoid the Commission ordering backstop procurement and providing Commission staff with latitude to evaluate whether delays are "reasonable and warranted" allowing an extension for compliance). Therefore, an LSE will temporarily avoid the costs associated with backstop procurement if granted an extension from timely compliance with a 2019 Order obligation but will not face penalties.

listed by SCE, including “commercially reasonable steps to contract with resources” and “commercially reasonable terms” in its contracts to incent performance.¹⁷ Importantly, the LSE must demonstrate that the delay results from factors beyond its control, and what those factors include. The “totality of the circumstances” may include (but are not limited to) the factors listed in the Ruling (including changed circumstances in the electric sector, regulatory and statutory impacts, market constraints and supply chain impacts), as well as factors listed in D.20-12-044 to be considered by the Commission for compliance delays with respect to the 2019 Order.¹⁸

Factors included in D.20-12-044 include:

- Resource-specific considerations:
 - Whether there is complete contract failure or delay
 - Length of delay estimated
 - Whether a project has failed to meet multiple milestones
 - Whether the delay is related to interconnection or transmission
 - Project stage of development
 - Quality of LSE or developer remediation plan (including diagnosis for the delay/failure and achievable mitigation steps, backed up by evidence)

- LSE-specific considerations:
 - Pattern of success in meeting previous milestones
 - Quality of mitigation or remediation plan
 - Thoroughness of documentation¹⁹

As recommended in Resolution M-4846, conduct of the LSE in alerting Energy Division as to delays and attempting to minimize the delays should be considered along with the “totality of the circumstances.” If the LSE can show such good faith efforts the extension should be liberally granted.

¹⁷ See SCE Opening Comments at 10.

¹⁸ D.20-12-044 at 19-20.

¹⁹ *Id.* at 19-20.

If granted, an extension of time should automatically provide a twelve-month extension to comply. During the twelve-month period, an LSE should be required to provide a report every other month with the LSE's efforts to comply and any changes to the scheduled online date of resources. In the event the LSE needs to submit an additional request for extension at the end of the twelve months, the LSE's efforts during the prior twelve-month period can be a factor in the Commission's evaluation of whether to grant a further extension.

While SCE proposes that the Commission "find" that it will not impose penalties based on delays caused by factors outside of an LSE's control, CalCCA's proposal to allow an extension of time for compliance also addresses the avoidance of backstop procurement as well as the corresponding waiver of penalties. In addition, CalCCA's proposal envisions a project receiving an extension, but the LSE still working to get the impacted project online. As a result, the extension of time is wholly in line with the Ruling's request for tools to encourage projects to remain viable and for procurement to be successful. Finally, given the potential for capacity from Diablo Canyon to temporarily remain online, extensions of time to allow a project to be brought online should be less of a concern from a short-term reliability perspective, and rather can be a longer-term viable solution to the current project delays. As a result, CalCCA encourages the Commission to adopt its framework for extensions of time based on an LSEs' "good faith efforts" to bring projects online despite project delays.

III. MODIFICATIONS TO BASELINE INCREMENTAL PROCUREMENT OBLIGATIONS MUST INCORPORATE ADEQUATE TIME FOR LSE PROCUREMENT AND CLEAR COUNTING RULES

CalCCA takes no position on the Ruling's proposals to modify the 2019 and MTR Order baselines. However, in the event the Commission adopts its baseline proposal, it should incorporate adequate time for LSEs to procure the additional capacity and provide clear NQC counting rules.

First, in the event any further procurement obligations are placed on LSEs, the Commission should adopt PG&E’s recommendation that the Commission issue the LSE obligations expeditiously, or by the end of the first quarter of 2023.²⁰ Given the difficulties of procuring additional resources in the current market, LSEs need to be notified quickly of any new obligations for timely compliance.

In addition, as proposed by PG&E and various CCA parties, the Commission should delay the online date of such resources to June 1, 2026 or longer, rather than 2025.²¹ LSEs facing severe market constraints need adequate time to procure and bring online new resources, and a deadline in 2025 fails to provide the requisite amount of time. In addition, the CAISO’s recommendation that the Commission require the resources to come online “by 2024 at the latest”²² fails to recognize current market constraints and project delays and should be rejected.

Finally, several parties noted that the Commission must recognize the potential that a resource’s current NQC value may differ between when the baseline was created and 2025 (or 2026, as recommended above).²³ SCE notes that the counting methodologies for D.19-11-016 and D.21-06-035 procurement are different. The Commission should therefore adopt SCE’s proposals to:

- Use the D.19-11-016 counting methodology (counting based on RA qualifying capacity methodologies in place at the time of the decision, and for hybrid and co-located resources, the methodology adopted in D.20-06-031) for “baseline” resources counted toward D.19-11-016 procurement;
- Use the net RA NQC counting rules in effect at contract execution for “baseline” resources online before 2023 that are counted toward D.21-06-035 requirements; and

²⁰ See PG&E Opening Comments at 4.

²¹ See *id.* at 4; CPA Opening Comments at 2; PCE Opening Comments at 2; SCP/RCEA Opening Comments at 5.

²² See CAISO Opening Comments at 4.

²³ See AReM Opening Comments at 6; SCE Opening Comments at 7-8.

- Use the marginal ELCC values or RA NQC rules, as applicable, as provided in D.21-06-035 for “baseline” resources that come online in 2023 or later that are counted toward D.21-06-035 requirements.²⁴

SCE’s proposal fairly categorizes resources according to which decision they are being counted toward, and the NQC guidance available when a project comes online.

IV. CONCLUSION

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

Respectfully submitted,



Evelyn Kahl,
General Counsel and Director of Policy
CALIFORNIA COMMUNITY CHOICE
ASSOCIATION

October 6, 2022

²⁴ SCE Opening Comments at 7-8.