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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements.	Rulemaking 16-02-007 (Filed February 11, 2016)

APPLICATION OF THE PROTECT OUR COMMUNITIES FOUNDATION FOR REHEARING OF D.19-11-016 DECISION REQUIRING ELECTRIC SYSTEM RELIABILITY PROCUREMENT FOR 2021-2023

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Pursuant to California Pub. Util. Code[1] section 1731, subdivision (b)(1) and Rule 16.1 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure (Rules), The Protect Our Communities Foundation (POC) submits this Application for Rehearing of Commission Decision D.19-11-016, *Decision Requiring Electric System Reliability Procurement for 2021-2023* (Decision). This application is timely because it is filed within 30 days after November 13, 2019, the date the Commission issued the Decision.[2]

[1] All statutory references are to the Public Utilities Code unless otherwise specified.
[2] Pub. Util. Code, § 1731, subd. (b)(1); Cal. Code Regs., tit. 20, § 16.1, subd. (a).

I. INTRODUCTION

The Decision erroneously (1) recommended the extension of compliance deadlines for certain once-through cooling power plants (OTC plants) that are required to retire by December 31, 2020; and (2) required 3,300 MW of incremental procurement for system-level resource adequacy capacity based on a misguided and unsubstantiated conclusion that there is a potential for electricity system resource adequacy shortages beginning in 2021. The Decision's unsubstantiated conclusion about a potential shortfall is based on a misinterpretation of an unreliable stack analysis and conjecture that available reserves may be less than the required 15% reserve margin above the average forecast peak load. The erroneous conclusion that renewable resources might not be reliably able to provide reserve power to serve load when needed, required the Commission to ignore solar-plus-battery resources as an alternative to fossil-fueled resources; and, thus, to violate the law which requires reliance upon zero carbon-emitting resources to the maximum extent reasonable. Conjecture about imported capacity resulted in constitutional violations. The Decision's misguided and unsubstantiated assumptions are the result of the Commission's failure to meet its statutory duty to hold evidentiary hearings.

In addition to being based on unsubstantiated assumptions, deciding to extend the compliance deadlines for retiring OTC plants was erroneous because the Commission did not first make a CEQA determination or consider whether such extensions would violate a variety of other laws and policies, and because non-retirement of the OTC plants would increase localized air pollutants and other greenhouse gas emissions in disadvantaged communities. Requiring 3,300 MW of incremental procurement was erroneous because the Commission ordered all load-serving entities (LSEs) to meet this requirement regardless of each LSEs individual contributions – or lack thereof – to system level resource adequacy capacity.

The result was a Decision that will increase greenhouse gas and other pollutants to the detriment of California's most vulnerable human populations and ocean dwellers, and which may result in costly overprocurement of reserve capacity to the detriment of ratepayers.

II. STANDARD OF REVIEW

Rule 16.1 requires an application for rehearing to "set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous."[3] "The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously."[4] POC submits this application for rehearing because:

> (1) The commission acted without, or in excess of, its powers or jurisdiction;
> (2) The commission has not proceeded in the manner required by law;
> (3) The decision of the commission is not supported by the findings;
> (4) The findings in the decision of the commission are not supported by substantial evidence in light of the whole record;
> (5) The order or decision of the commission was procured by fraud or was an abuse of discretion.
> (6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.[5]

The Commission failed to proceed in the manner required by law by "failing to comply with required procedures, applying an incorrect legal standard, or committing some other error of law,"[6] including failing to comply with its own procedural rules.[7] Findings are required as a matter of both statutory and decisional law.[8]

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[3] Rule 16.1, subd. (c); Cal. Code Regs., tit. 20, § 16.1, subd. (c).
[4] *Ibid*.
[5] Pub. Util. Code, § 1757, subd. (a).
[6] *Pedro v. City of Los Angeles* (2014) 229 Cal.App.4th 87, 99.
[7] *Southern California Edison Co. v. Public Utilities Com.* (2006) 140 Cal.App.4th 1085, 1106.
[8] *Ibid.*; Pub. Util. Code, §§ 1705, 1757, subd. (a)(3); *Northern California Power Agency v. Public Utilities Com.* (1971) 5 Cal.3d 370, 380 ("Even if we were to assume…that the Commission did in fact take into

Section 1705 mandates that a Commission "decision shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision."[9] As the California Supreme Court has explained:

> Findings are essential to "afford a rational basis for judicial review and assist a reviewing court to ascertain the principles relied upon by the commission and to determine whether it acted arbitrarily, as well as assist parties to know why the case was lost and to prepare for rehearing or review, assist others planning activities involving similar questions, and serve to help the commission avoid careless or arbitrary action."[10]

"Substantial evidence is evidence that a rational trier of fact could find to be reasonable, credible, and of solid value."[11] In determining whether a decision is supported by substantial evidence in light of the whole record, an agency "cannot just isolate the evidence supporting the findings and call it a day," but rather "must consider all relevant evidence, including evidence detracting from the decision."[12] "Evidence is relevant if it has 'any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.'"[13]

As detailed below, the application of these legal requirements demonstrate that the Decision should be vacated and the Commission should hold evidentiary hearings to address the issues set forth herein.

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account the [material issue] [], we would still be compelled to annul the decision because of the Commission's obvious failure to make appropriate findings. As we have often said, the Commission must make specific findings of fact and conclusions of law relevant to all issues of a case.").

[9] Pub. Util. Code, § 1705.

[10] *California Manufacturers Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 251, 258-259.

[11] *Pedro v. City of Los Angeles* (2014) 229 Cal.App.4th 87, 99.

[12] *The Utility Reform Network v. Public Utilities Com.* (2014) 223 Cal.App.4th 945, 959 ("the court must consider all relevant evidence"); *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 570.

[13] *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 570.

III. FACTUAL BACKGROUND

The Decision was issued in the Integrated Resource Planning rulemaking initiated by the Commission "to develop an electricity integrated resource planning framework and to coordinate and refine long-term procurement planning requirements" on February 11, 2016.[14] The Order Instituting Rulemaking (OIR) explained that the Commission's purpose for opening the rulemaking was to continue its "efforts to ensure a safe, reliable, and cost-effective electricity supply in California."[15] The OIR stated that "all resource and procurement planning in this proceeding will be done in the context of SB 350, and will also be informed by the previous policy documents such as "energy policies, greenhouse gas limitations, and once-through-cooling policies."[16]

On May 26, 2016, the Joint Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (Scoping Memo) focused the scope of the proceeding "around two of the new sections of the Public Utilities Code, codified by SB 350," Section 454.51 and 454.52.[17] The Scoping Memo stated: "we intend to organize the majority of this proceeding around developing the requirements for all of the LSEs under the Commission's jurisdiction to file integrated resource plans" and listed a variety of topics to this end.[18] The Scoping Memo also listed two items in the scope of the previous long term planning process (LTPP) and several issues traditionally associated with previous LTPP proceedings.[19]

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[14] R.16-02-007, *Order Instituting Rulemaking to Develop and Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements* (February 11, 2016) (OIR).
[15] *Id.* at p. 2.
[16] *Id.* at p. 5.
[17] R.16-02-007, Joint Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (May 26, 2016) (Scoping Memo), pp. 3-4.
[18] *Id.* at pp. 7-10.
[19] *Id.* at pp. 11-12.

An Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge was filed on May 14, 2018 (Amended Scoping Memo).[20] The Amended Scoping Memo recategorized the proceeding as ratesetting[21] and focused the remainder of the proceeding on (1) "Items required in preparation for the filing of individual LSE IRPs;" (2) "Consideration of individual IRPs, leading to adoption of the Preferred System Plan;" and (3) "Groundwork and preparation on policy issues for consideration in the 2019-2020 IRP Cycle."[22]

According to the Decision, the Commission's "inquiry into the potential for near- or medium-term reliability issues began with a November 16, 2018 joint Assigned Commissioner and Administrative Law Judge (ALJ) Ruling seeking comment from parties on policy issues related to reliability."[23] The Ruling of Assigned Commission and Administrative Law Judge Seeking Comment on Policy Issues and Options Related to Reliability revealed that the comments of Southern California Edison (SCP) and the California Large Energy Consumers Association (CLECA) "stood out."[24] "To further the exploration of potential reliability issues and spur the development of possible procurement options, another assigned Commissioner and ALJ Ruling was issued on June 20, 2019."[25] According to the Decision, this ruling "initiated the procurement track of the proceeding and offered a straw proposal for how potential near-term electricity system resource reliability issues could be addressed."[26] The issues and the "potential solutions" raised in the 6/20/19 Ruling were not included in the published schedule of the proceeding in Scoping Memo or the Amended Scoping Memo.

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[20] R.16-02-007, Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (May 14, 2018) (Amended Scoping Memo).
[21] *Id.* at p. 11.
[22] *Id.* at p. 3.
[23] D.19-11-016, p. 4.
[24] R.16-02-007, Ruling of Assigned Commission and Administrative Law Judge Seeking Comment on Policy Issues and Options Related to Reliability (November 16, 2018), p. 2.
[25] D.19-11-016, p. 4.
[26] D.19-11-016, p. 4.

The Commission took comments and reply comments on the 6/20/19 Ruling by July 22, 2019 and August 12, 2019, respectively, and published a proposed decision on September 12, 2019 (PD). After comments on the PD were submitted, the Commission published a revised proposed decision on October 21, 2019 (RPD). After comments on the RPD were submitted – and without ever allowing any evidence to be taken - the Commission voted 5-0 on November 7, 2019 to recommend that the State Water Resources Control Board (Water Board) extend the "compliance deadline" for five OTC plants and to require LSEs throughout California to procure an additional 3,300 MW of power for the years 2021, 2022, and 2023.[27] With the exception of Moss Landing,[28] all the OTC plants the Decision recommends extending are required to cease operations by December 31, 2020 pursuant to the terms of the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling (OTC Policy)[29] which the Water Board adopted on May 4, 2010 to comply with the Clean Water Act.[30]

[27] D.19-11-016, pp. 79-81.
[28] The Decision admits Moss Landing has nothing to do with capacity and therefore there is no basis for its inclusion in the Decision. *See* D.19-11-016, pp. 20-21.
[29] *See* Request for Official Notice, Exhibit A, Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling, as last amended on November 20, 2017 (OTC Policy), available at https://www.waterboards.ca.gov/water_issues/programs/ocean/cwa316/policy.html [last accessed December 13, 2019]; D. 19-11-016, p. 2
[30] Request for Official Notice, Exhibit B, State Water Resource Control Board Resolution No. 2010-0020 (Water Board Res. 2010-0020), available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2010/rs2010_0020.pdf [last accessed December 13, 2019]; Request for Official Notice, Exhibit A, OTC Policy, p. 1.

IV. ARGUMENT

A. The Decision is Based on Unsubstantiated Conjecture About Potential System Resource Adequacy Shortfalls.

The findings that the OTC plants and 3,300 MW of incremental system resource adequacy are necessary and reasonable do not appear supported by any evidence, much less substantial evidence.[31] The Decision relies in large part on the 6/20/19 Ruling's description of the stack analysis, which constitutes demonstrably unreliable double hearsay.[32] For example, the Decision admits that the staff analysis did not meet the standards that the Commission developed and has previously used.[33] The excuse the Decision provides is that "given the imminence of the 2021 system reliability needs, there is not time to complete that analysis, allow additional input and vetting from parties, and still have procurement take place in time to meet a potential shortfall in the timeframe of Summer 2021."[34] This excuse contradicts the Commission's acknowledgement as early as 2010 that "further analysis is needed before any renewable integration resource need determination is made."[35] The Commission concedes that it does not actually know whether the OTC plants are in fact necessary.[36]

[31] D.19-11-016, pp. 7-8; *The Utility Reform Network v. Public Utilities Com.* (2014) 223 Cal.App.4th 945, 959 ("Documentary evidence that is introduced for the purpose of proving the matter stated in writing is hearsay *per se* because the document is not a statement by a person testifying at the hearing.") (internal quotations omitted).
[32] Evid. Code, § 1200, subd. (a) ("'Hearsay evidence' is evidence of a statement that was made other than by a witness while testifying at the hearing that is offered to prove the truth of the matter asserted.").
[33] D.19-11-016, p. 14.
[34] D.19-11-016, p. 14.
[35] *The Utility Reform Network v. Public Utilities Com.* (2014) 223 Cal.App.4th 945, 944, quoting D.12-04-046, *Decision on System Track I and Rules Track III of the Long-Term Procurement Plan Proceeding and Approving Settlement* (April 19, 2012), p. 6. ("it is impossible to predict the size and length of a bridge we may need retiring OTC units to provide, and it seems most prudent to make the OTC units available to the resource adequacy program for the next several years to let the markets answer these questions").
[36] D.19-11-016, pp. 19-20.

Reliance on CAISO's analysis is similarly unsubstantiated and unreliable. According to the Decision, CAISO's operational concerns assumed that solar resources "do not provide the type of capacity needed to ensure system reliability in real time."[37] This reveals that the Commission failed to consider battery-plus-storage options, which constitutes legal error because the Commission is required to consider "every element of public interest affected by facilities which it is called upon to approve."[38] In *Northern California Power Agency v. Public Utilities Com.,* the California Supreme Court concluded that the Commission "erred in failing to give adequate consideration to, and to make appropriate findings on," the issues raised by the plaintiff's contentions that the utility's plan to purchase steam for new generating units involved contracts that violated both state and federal antitrust laws.[39] Here, like the *Power Agency* case, the Commission failed to give adequacy consideration to POC's contentions that battery-plus-storage projects must be considered as a cost effective alternative to fossil-fueled resources in order to comply with statutory requirements to "rely upon zero carbon-emitting resources to the maximum extent reasonable."[40]

The Decision also erroneously assumed that existing resources are cheaper than new resources.[41] This conclusory assumption required the Commission to ignore POC's repeated comments containing data and evidence that renewable resources can be procured at a lower cost than existing fossil fuel resources.

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[37] D.19-11-016, p. 21.
[38] *Northern California Power Agency v. Public Utilities Com.* (1971) 5 Cal.3d 370, 380 (the Court further held: "It should not be necessary for any private party to rouse the Commission to perform its duty" to consider "every element of public interest affected by facilities which it is called upon to approve.").
[39] *Id.* at 372.
[40] Pub. Util. Code, §§ 454.51, subd. (a), (b).
[41] D.19-11-016, p. 30 ("An important consideration is the fact that, all else being equal in an all-source solicitation, existing resources should be able to be provided more economically than new resources, since at least some of their capital investment should have already been covered by previous contracts. Therefore, we see no reason to restrict any all-source solicitations to "new" resources only.").

Examples of the data contradicting the Commission's assumption that POC submitted in this record include (1) the Los Angeles Department of Water and Power (LADWP) procuring solar-plus-battery for under $33/MWh,[42] (2) Tesla projects which aggregate distributed battery output into a virtual power plant that can largely offset purchase costs for the utilities and completely eliminate upfront battery storage costs for customers,[43] and (3) projects previously acknowledged by SCE and the Commission themselves, such as commercial and industrial rooftop solar projects.[44] Other than to acknowledge that POC filed opening and reply comments, the Decision conspicuously omits any substantive discussion of POC's comments concerning renewable alternative procurement options.[45]

Moreover, despite the overwhelming request from many parties,[46] the Commission acknowledged it did not and would not place a resource adequacy value on any kind of hybrid resources before approving of extensions for the OTC Plants and ordering additional procurement.[47]

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[42] R.16-02-007, The Protect Our Communities Foundation Comments on the Administrative Law Judge's Proposed Decision Requiring Electric System Reliability Procurement for 2021-2023 (October 2, 2019), p. 7, & fn. 7; *see also* Request for Official Notice, Exhibit C, Excerpts of Attachment to Report dated 09/11/2019 – Report from City Administrative Officer (CAO), available at http://clkrep.lacity.org/onlinedocs/2019/19-1081_misc_4_09-20-2019.pdf [last accessed December 13, 2019].

[43] *See e.g.* R.16-02-007, The Protect Our Communities Foundation Comments on Utilities' Proposed Integrated Resource Plans (IRP) (September 12, 2018), pp. 13-14, 20-21, & fns. 40-42, 44, 46, 72-77.

[44] *Id.* at pp. 20-21, & fns. 72-77; *see also* D.09-06-049, *Decision Addressing a Solar Photovoltaic Program for Southern California Edison Company* (June 18, 2009), p. 32 ("…the SPVP program facilitates the immediate construction of new renewable resources, without the cost or delay created by the traditional need for new transmission for large scale RPS resources.").

[45] D.19-11-016, pp. 5, 6, 8-13.

[46] R.16-02-007, Joint Motion of Enel X North America, Inc., Tesla, Inc., Sunrun Inc., Center for Energy Efficiency and Renewable Technologies, California Energy Storage Alliance, and Vote Solar to Establish a Schedule and Process for Determining the Capacity Value of Hybrid Resources (September 27, 2019), p. 3 ("Commission inaction on establishing QC methodologies for IFM and BTM hybrid resources unreasonably overlooks the potential incremental capacity contributions of hybrid resources, and in doing so, unfairly assigns these resources a capacity value of zero.").

[47] D.19-11-016, p. 45 (denying the motion to value hybrid resources "procedurally").

While claiming to consider system-level resource adequacy needs, the Commission did not even consider – much less count – battery-plus-storage projects. The Decision thus lacks a sufficient evidentiary basis for concluding there is a potential for resource adequacy shortages as a result of solar. As a result, no substantial evidence exists in the record to support the Decision's findings regarding purported need for system resource adequacy – neither the OTC plants nor an additional 3,330 MW by the Summer of 2021.[48]

1. The Decision's treatment of imports in light of its unsubstantiated conclusions about import capacity violates the Dormant Commerce Clause.

The Decision demonstrates that the 6/20/19 Ruling's description of the stack analysis may not be considered to be substantial evidence with respect to its conclusions about import capacity. Although the Decision states that the "June 20, 2019 ruling also noted that the stack analysis shows that based on current knowledge, by 2021 the system could end up relying on all available resources, including nearly all of the available MIC, which is roughly double the historical usage of imports for system reliability purposes,"[49] this statement could not be based on credible evidence as a matter of law. Relying on the available MIC[50] could not be "roughly double the historical usage of imports for system reliability purposes" because CAISO *uses* historical import usage data to *calculate* the MIC.[51]

[48] *See e.g.* D.19-11-016, p. 68 (Finding of Fact 3); p. 69 (Finding of Fact 5); p. 70 (Findings of Fact 16, 17); *The Utility Reform Network v. Public Utilities Com.* (2014) 223 Cal.App.4th 945, 960 ("There must be substantial evidence to support…a [] ruling, and hearsay, unless specially permitted by statute, is not competent evidence to that end.") (internal quotations omitted).
[49] D.19-11-016, pp. 7-8.
[50] MIC is an acronym for maximum import capability.
[51] California ISO, Resource Adequacy Enhancements Issue Paper (October 22, 2018), p. 7, available at http://www.caiso.com/Documents/IssuePaper-ResourceAdequacyEnhancements.pdf [accessed December 10, 2019] ("The ISO calculates available import capability for each intertie by using historical import schedule data during peak load periods for the prior two years.").

Nevertheless, the Commission expresses concern that imports are unreliable "because California has less control over the resources,"[52] and goes so far as to expressly prohibit LSEs from relying on imports for more than twenty percent (20%) of the mandated incremental capacity.[53] The Commission fails to include any reasoning supporting the 20% limit that it imposes. Thus, the Decision lacks any basis on which to impose its restriction on interstate commerce. Erecting these kinds of barriers against interstate trade is prohibited by the United States Constitution's Dormant Commerce Clause[54] as well as by California law.[55] "State laws that discriminate against interstate commerce face 'a virtually *per se* rule of invalidity.'"[56] Because the Decision lacks any legitimate purpose that could justify its arbitrary 20% limit on imports, the Decision discriminates against interstate commerce and is invalid.

2. The Commission's failure to consider solar-plus-battery alternatives to fossil-fueled resources fails to require that zero carbon-emitting resources be relied upon to the maximum extent reasonable and is inconsistent with the loading order.

The Commission failed to make findings that it has identified and required adherence to a portfolio that "shall rely upon zero carbon-emitting resources to the maximum extent reasonable."[57] Failing to make the statutorily-required findings itself requires that the proceeding be reopened.[58]

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[52] D.19-11-016, p. 16.
[53] D.19-11-016, p. 83 (OP #6) ("…Imported power may be used to satisfy the Ordering Paragraph 3 requirements up to a maximum of 20 percent of each LSE's requirement, if the imported power is under a contract of at least three years in length, is associated with an identified specific resource and dynamically transferred or pseudo tied, and meets all other resource adequacy requirements for imports.").
[54] U.S. Const., art. I, § 8, cl. 3; *Maine v. Taylor* (1986) 477 U.S. 131, 137; *Commonwealth of Pennsylvania v. West Virginia* (1923) 262 U.S. 553, 597 (subordinating interstate business to in-state business "is in effect an attempt to regulate the interstate business to the advantage of the local consumers," which a state does not have authority to do).
[55] Pub. Util. Code, § 380, subd. (e).
[56] *South Dakota v. Wayfair, Inc.* (2018) 138 S.Ct. 2080, 2091.
[57] Pub. Util. Code, §§ 454.51, subd. (a), (b).
[58] *City and County of San Francisco v. Public Utilities Com.* (1971) 6 Cal.3d 119, 130 (holding that "failure to consider lawful alternatives" is error, and "the decision of the commission must be annulled").

The Commission fails to make these findings because it cannot: the Commission requests all-source procurement, including additional fossil-fueled procurement.[59] Failing to consider solar-plus-battery alternatives while adding fossil-fuel procurement contradicts California law and policy to rely upon zero carbon-emitting resources to the maximum extent reasonable, as well as the Commission's past decisions which required adherence to the loading order;[60] and, thus, cannot stand.

3. The Commission failed to proceed in the manner required by law in failing to provide evidentiary hearings or otherwise take evidence.

As the City and County of San Francisco pointed out, prior Long-Term Planning Procurement Plan proceedings involved evidentiary hearings and, as a result, did not result in such large procurement requirements.[61] The Commission's past practice was consistent with statute and the Commission's own rules. When the Commission investigates a "rate, classification, rule, contract, or practice" of any public utility, and when the Commission "finds that the rates or classifications, demanded, observed, charged, or collected by any public utility for or in connection with any service, product, or commodity, or the rules, practices, or contracts affecting such rates or classifications are insufficient, unlawful, unjust, unreasonable,

[59] D.19-11-016, pp. 76-77 (Finding of Fact #22) ("The Commission should prefer all-source procurement of resources, including demand-side resources and preferred resources, to the extent possible, as long as resources can be shown to be incremental to the 2022 baseline set of resources. New fossil-fuel-only resources (without storage) at sites not previously used for electricity generation and OTC units are not eligible to meet the 3,300 MW incremental need identified in this decision. Capacity upgrades to and repowers to add capacity to existing resources, including baseline resources, are eligible based on the incremental capacity addition.").

[60] D.12-01-033, *Decision Approving Modified Bundled Procurement Plans* (January 12, 2012), p. 51 (OP 4: "Utility procurement must comply on an ongoing basis with the Commission's loading order.").

[61] R.16-02-007, Opening Comments of City and County of San Francisco on Proposed Decision Requiring Electric System Reliability Procurement for 2021-2023 (Oct. 2, 2019), p. 5 ("The difference is that procurement authorizations in those proceedings were based on an analysis of the assumptions regarding the electric system and based on evidentiary hearings that analyzed the parties' proposals for procurement.[] For example, in D.13-02-015, rather than accept CAISO's proposed reliability procurement at face value, the Commission authorized 600 MW less than CAISO's proposal after considering critiques of the proposal and assumptions about the supply of available capacity.[]")

discriminatory, or preferential," it must do so after a hearing as a matter of law.[62] Here, the Commission purported to investigate the contracts and practices of the LSEs to determine "the potential for near- or medium-term reliability issues,"[63] and the Commission found that the LSEs practices and contracts were insufficient to ensure system and local reliability.[64] Accordingly, a hearing was required. The Commission failed to hold a hearing, or to take any evidence at all.

By refusing to consider the evidentiary basis – or lack thereof – of the parties' comments, the Commission has prevented POC from a meaningful opportunity to disprove the erroneous assumptions made by staff and other parties like the CAISO and SCE, which were accepted by the Commission without evidentiary substantiation. The Commission lacks authority to contravene legislative directives and its own rules.[65] The courts are particularly vigilant when governments impose rules and conditions which serve to insulate their own acts from legitimate judicial challenge.[66]

To make matters worse, in addition to failing to provide a hearing in this proceeding, the Decision precludes any hearing from happening in the future by ordering – over the objection of POC[67] and others[68] - that additional procurement proceed by Advice Letter.[69]

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[62] Pub. Util. Code, §§ 728, 729.
[63] D.19-11-016, p. 4.
[64] *See e.g.* D.19-11-016, pp. 68-70 (Finding of Facts 3, 5, 15-17).
[65] *Southern California Edison Co. v. Public Utilities Com.* (2000) 85 Cal.App.4th 1086, 1105-1106.
[66] *Legal Services Corp. v. Velasquez* (2001) 531 U.S. 533, 548 (holding that First Amendment precludes Congress from prohibiting the distribution of funds to free legal service providers that represent clients challenging welfare law).
[67] R.16-02-007, The Protect Our Communities Foundation Comments on Assigned Commissioner and Administrative Law Judge's Ruling Initiating Procurement Track and Seeking Comment on Potential Reliability Issues (July 22, 2019), pp. 17-18; D.19-11-016, p. 51.
[68] *See e.g.* R.16-02-007, Application of the California Environmental Justice Alliance, Sierra Club, Defenders of Wildlife, and the Public Advocates Office to Rehear and Clarify Decision 19-11-016 (December 5, 2019), p. 17.
[69] D.19-11-016, p. 52 ("requir[ing] the IOUs to present TIER 3 advice letters for all contracts that will be used to satisfy the obligations in this decision"); p. 72 (Findings of Fact 28, 29), p. 78 (Conclusions of Law 30, 32), p. 84-85 (Ordering Paragraph 9).

The preclusion of any future evidentiary hearing constitutes a failure to proceed in the manner required by (1) Section 454, which requires that a major change in rates must be made by application,[70] (2) Section 454.5(d), which requires that the Commission approves of procurement plans that will allow for "just and reasonable rates"[71] and (3) the Commissions own rules, which explain that the "advice letter process provides a quick and simplified review of the types of utility requests that are expected neither to be controversial nor to raise important policy questions."[72]

The procurement required by this Decision – both the OTC plants and the 3,300 MW of incremental system resource adequacy capacity - can in no way be considered uncontroversial, and the public policy issues involved can in no way be considered unimportant.[73] Thus the Commission's choice to proceed with the OTC plants and the additional 3,300 MW compounds its error in failing to allow parties to test unsupported assumptions and assertions through an evidentiary hearing process. The proceeding must be reopened to allow for an evidentiary hearing so that the Commission's decisions can be informed by the facts.

B. Deciding to Seek Extensions for the OTC Plants is Out of Scope, Fails to Comply with CEQA and the Clean Water Act, and Increases Pollution in Disadvantaged Communities.

In addition to the fact that the Commission's reasons for unnecessarily extending the life of OTC plants are based on unsubstantiated assumptions about the reliability of renewable resources and imports, the Commission failed to follow its own rules and procedures and failed to address the impacts of the OTC plants on vulnerable human populations and the environment.

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[70] *Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 720.
[71] Pub. Util. Code, § 454.5, subds. (d)(1), (2).
[72] General Order 96-B, General Rule 5.1.
[73] Roth, Sammy, *California faces a crossroads on the path to 100% clean energy,* San Diego Union Tribune (December 12, 2019), https://www.sandiegouniontribune.com/news/environment/story/2019-12-12/california-clean-energy-gas-plants.

1. Considering the OTC plants was beyond the scope of this proceeding.

In both ratesetting and rulemaking proceedings, the Assigned Commissioner is required to "prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution and that, consistent with due process, public policy, and statutory requirements, determines whether the proceeding requires a hearing."[74] The Commission failed to proceed in the manner required by law in raising the OTC plants as an issue in this proceeding - much less by deciding to recommend that OTC plants should not retire as required by the OTC Policy and the law - because the OTC Plants were included in neither the original scoping memo nor the amended scoping memo.[75]

Starkly at odds with extending the life of any OTC plants in contravention of State Water Board policies and orders, the OIR expressly stated that the proceeding would be informed by polices such as the loading order, climate change policies, and once-through-cooling policies.[76] The OIR's language created the presumption that the Commission would incorporate state policy in its evaluation – not act to contravene state policy.

Likewise, the Amended Scoping Order referred to "[w]hether the Commission needs to order specific procurement activities to implement and effectuate the individual IRPs"[77] none of which have been described as containing proposals to violate State Water Board orders or policies. Thus, all of the Commission's scoping documents listing the topics to be considered within this rulemaking led the parties to believe that the Commission would follow State Water Board policies and pending orders – not act to contravene them.

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[74] Pub. Util. Code, § 1701.1(b)(1), (c).
[75] R.16-02-007, Scoping Memo; R.16-02-007, Amended Scoping Memo; *Southern California Edison Co. v. Public Utilities Com. (*2006) 140 Cal.App.4th 1085, 1106 (Commission's failure to follow its own rules constitutes a failure to proceed in the manner required by law.); Rules 6.2, 7.3; Cal. Code Regs., tit. 20, §§ 6.2, 7.3.
[76] R.16-02-007, OIR, p. 5.
[77] R.16-02-007, Amended Scoping Memo, p. 5.

Even the original Scoping Order's catch-all provision cannot reasonably be interpreted to include the OTC plants after December 31, 2020.[78] Prior proceedings have assumed the OTC plants will comply with – not thwart - state policy.[79] When OTC issues *consistent with* state policy have been considered in the past, they were expressly addressed in scheduling orders and in the context of proceedings with evidentiary hearings.[80] Thus, the Commission committed legal error in considering any issue relating to OTC Plants that are subject to a Water Board compliance order. The OTC Plants never should have been part of this proceeding in the first instance because the OTC plants and the issues raised by the Commission's recommendation that their compliance deadlines be extended were not included in any scoping order.

2. The Commission failed to make a CEQA determination or consider that the OTC Policy was adopted to comply with the Clean Water Act.

The Commission failed to proceed in the manner required by law by failing to make a written determination under the California Environmental Quality Act (CEQA) before recommending the compliance deadline for OTC plants be extended. The Water Board adopted the OTC Policy[81] to implement Section 316 of the Clean Water Act, which requires "that the location, design, construction, and capacity of cooling water intake structures reflect the best

[78] R.16-02-007, Scoping Memo, p 12 ("Finally, issues traditionally associated with previous LTPP proceedings and which will remain in scope in this proceeding include: …Any other issues that materially impact procurement policies, practices and/or procedures, and relate to one or more of the IRP/LTPP proceeding's goals or issues listed above.").
[79] D.14-03-004, *Decision Authorizing Long-Term Procurement for Local Capacity Requirements Due to Permanent Retirement of the San Onofre Nuclear Generations Stations* (March 13, 2014), p. 86 (D.13-02-015 found it "'reasonable to assume that the OTC plants in the SCE territory required to comply with SWRCB regulations will comply through retirement or repowering consistent with the SWRCB schedule, for the purpose of LCR forecasting in this proceeding...We do not revisit this Finding."); D.12-02-046, *Decision on System Track I and Rules Track III of the Long-Term Procurement Plan Proceeding and Approving Settlement* (April 19, 20112), p. 70 (Finding of Fact #6) ("Utility procurement of electricity from generation facilities using OTC should be consistent with SWRCB regulations, and should encourage the operators of those generation facilities to comply with the regulations.").
[80] D.12-04-046, p. 20 & fn. 12; R.10-05-006, Administrative Law Judge's Ruling Revising System Track I Schedule (May 10, 2011), p. 4.
[81] Request for Official Notice, Exhibit A, OTC Policy.

technology available (BTA) for minimizing adverse environmental impact,"[82] after conducting program level environmental review under CEQA.[83] The Commission's failure to render a written determination regarding the environmental effects of recommending that the OTC Plants *not* comply with the OTC Policy violates CEQA.[84] The Commission's failure to perform any environmental review is particularly detrimental in light of the fact that "the Commission is the only entity in the position to ensure an optimal portfolio that meets the environmental goals, while also allowing the electric system to operate reliably and at least cost to ratepayers"[85] and that the "IRP proceeding is the only venue where the Commission comprehensively examines environmental, reliability, and cost issues for all LSEs."[86] Because OTC plants are known to "harm fish, shellfish, and their eggs by pulling them into the factory's cooling system; they can injury or kill other aquatic life by generating heat or releasing chemicals during cleaning processes; and they can injure larger fish, reptiles and mammals by trapping them against the intake screens,"[87] the Commission's CEQA determination should take into account that changing the OTC Policy would violate the Clean Water Act,[88] the Porter-Cologne Water Quality Control Act,[89] and potentially state and federal endangered species acts[90] and the Marine Mammal Protection Act.[91]

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[82] Request for Official Notice, Exhibit B, Water Board Reso. 2010-0020, p. 1.
[83] *Id.* at p. 5.
[84] *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 79 (holding agency violated CEQA because it "failed to render a written determination respecting the environmental effect of the [] project before it approved that project"), disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 575-576.
[85] D.18-02-018, *Decision Setting Requirements for Load Serving Entities Filing Integrated Resource Plans* (February 8, 2018), p. 104; *see also City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 375 (CEQA violated where agency "incorrectly disclaims the power and duty to mitigate identified environmental effects").
[86] D.19-04-040, *Decision Adopting Preferred System Portfolio and Plan for 2017-2018 Integrated Resource Plan Cycle* (April 25, 2019), p. 170 (Finding of Fact 29).
[87] *Sierra Club, Inc. v. United States Fish and Wildlife Service* (2018) 911 F.3d 967, 974.
[88] 33 U.S.C. §§ 1311, 1326.
[89] *See e.g.* Wat. Code, §§ 13000 et seq, 13241.

The Commission made arguably only one finding even nominally related to the environmental impact of the Decision. "The capacity factors of the OTC units with current retirement dates of December 31, 2020 are all under 10 percent for the past several years, which means that the use of sea water for cooling and emissions are minimal compared to their historical levels."[92] This sole finding fails to meet CEQA requirements, much less even address the relevant question under CEQA, which requires the Commission to inform the public and other agencies of the impacts of the Decision on existing physical conditions.[93]

The Decision's sole environmental finding's also fails to explain why the Commission departs from its prior decisions and findings that the OTC plants' "large use of seawater for cooling kills significant amounts of marine life, including larvae, eggs, fish, turtles, and marine mammals"[94]

3. The Decision increases localized air pollutants and other greenhouse gas emissions in disadvantaged communities.

The Decision also violates the Commission's statutory mandates because it increases pollution in disadvantaged communities instead of "[m]inimiz[ing] localized air pollutants and other greenhouse gas emissions, with early priority on disadvantaged communities."[95] Prior Commission decisions have acknowledged that "existing natural gas plants are located disproportionately in disadvantaged communities" so "there is a nexus between analysis of natural gas resources and disadvantaged communities impacts."[96]

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[90] 16 U.S.C. § 1531 et seq.; Fish and Game Code, § 2050 et seq.
[91] 16 U.S.C. § 1361 et seq.
[92] D.19-11-016, pp. 69-70 (Finding of Fact 12).
[93] *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 457.
[94] D.12-04-046, *Decision on System Track I and Rules Track III of the Long-Term Procurement Plan Proceeding and Approving Settlement* (April 19, 2012), p. 18.
[95] Pub. Util. Code § 454.52(a)(1)(H); *see also* Pub. Util. Code, § 454.5(b)(9)(D)(i).
[96] D.18-02-018, p. 60.

The Decision admits that expanding the life of the OTC plants will be detrimental to disadvantaged communities,[97] but then it fails to act – or even to discuss – minimizing or mitigating that acknowledged harm. The only finding regarding the requirements of Section 454.52(a)(1)(H) states simply that "Section 454.52(a)(1)(H) requires LSEs to minimize localized air pollutants and GHG emissions, with early priority on disadvantaged communities."[98] This finding is deficient in two major respects. The glaring deficiency is that a finding that a law requires something is not the same as finding that the requirements have in fact been met. The more subtle deficiency is that the Commission fails to acknowledge that it has a corresponding statutory duty to ensure that the LSEs minimize localized air pollutants. The Commission did not and cannot find that it has met its obligation under Section 454.52(a)(1)(H) to minimize localized air pollution and other greenhouse gases in disadvantaged communities because the Decision *increases* pollution and other greenhouse gases in disadvantaged communities.

C. The Commission Failed to Proceed in the Manner Required by Law in Ordering 3,300 MW of Incremental System-Level Resource Adequacy Without Preventing Cost Shifting or Resource Shuffling and Without Minimizing the Impacts on Ratepayers' Bills.

The Commission's decision to order incremental system-level resource adequacy was not only based on no substantial evidence; it also violated the law as set forth below.

1. The Commission failed to prevent cost shifting.

The Commission must "ensure that the costs are allocated in a fair and equitable manner to all customers consistent with Section 454.51, that there is no cost shifting among

[97] D.19-11-016, p. 20 (noting Alamitos and Huntington Beach "offer the potential for the least detrimental impact to their communities and to the sea life affected by the OTC units" compared to Ormond Beach and Redondo Beach which "create more harm in their communities and/or would interfere with other plans already underway to redevelop their sites for community use.").
[98] D.19-11-016, p. 72 (Finding of Fact 26).

customers."[99] The Decision fails to make any findings on these issues which are required as a matter of law.[100] The Commission can make no such finding because the Decision impermissibly shifts costs among customers. The cost shifting required by the Commission's procurement order occurs between the customers of the various LSEs – improperly rewarding LSEs that failed to provide adequate resources for their customers while inappropriately penalizing those LSEs that already procured adequate resources and capacity. Doing so violates Section 454.51. San Diego Gas & Electric (SDG&E), for example, represents that it has "existing long-term RA commitments outside of its local area that, in combination with its local RA procurement, satisfies SDG&E's system RA requirement."[101] Requiring SDG&E to procure additional system resources, however, "does nothing to satisfy SDG&E's local RA need."[102]

Instead of finding that it has presented cost shifting among customers, the Decision includes the following non-sequitur: "Because incremental system resource adequacy capacity is needed at the system level, it is reasonable for the Commission to allocate responsibility for this procurement to all LSEs on behalf of the customers they serve in all IOU TAC areas."[103] The Commission has failed to meet its statutory mandate to make findings that there is no cost shifting among customers.

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[99] Pub. Util. Code, § 454.52, subd. (c); *see also* Pub. Util. Code, § 454.54.
[100] Pub. Util. Code, §§ 1705, 1757, subd. (a)(3); *California Manufacturers Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 251, 258-259; *Southern California Edison Co. v. Public Utilities Com.* (2006) 140 Cal.App.4th 1085, 1106; *Northern California Power Agency v. Public Utilities Com.* (1971) 5 Cal.3d 370, 380 ("As we have often said, the Commission must make specific findings of fact and conclusions of law relevant to all issues of a case.").
[101] R.16-02-007, Comments of San Diego Gas & Electric Company (U 902 E) in Response to Assigned Commissioner and Administrative Law Judge's Ruling Initiating Procurement Track and Seeking Comment on Potential Reliability Issues (July 22, 2019), p. 11.
[102] *Ibid.*
[103] D.19-11-016, p. 74 (Finding of Fact 11).

The Decision could not make the appropriate findings because the Decision does not in fact prevent cost shifting. Although a system issue can be addressed on a system-wide basis, the Commission does not ensure there is no cost shifting among customers unless the Commission also considers the system RA contributions – or the lack thereof[104] - of individual LSEs. In ordering all LSEs to procure more system resource adequacy based solely on load - regardless of whether that entity has already met system RA requirements - the Commission fails to prevent cost shifting among customers.[105]

2. The Commission failed to prevent resource shuffling.

Section 454.53(a) states that it is "the policy of the state that eligible renewable energy resources and zero-carbon resources supply 100 percent of all retail sales of electricity to California end-use customers and 100 percent of electricity procured to serve all state agencies by December 31, 2045," and requires that the "achievement of this policy for California shall not increase carbon emissions elsewhere in the western grid and shall not allow resource shuffling."[106]

The Decision lacks any findings establishing its compliance with state policy described by Section 454.53(a), or that it has disallowed resource shuffling. To the contrary, the Decision admits that it fails to prevent resource shuffling: "We continue to have reservations about the GHG impacts of such contracting, such as whether the commitment could represent resource shuffling rather than incremental GHG-free production."[107]

[104] Pub. Util. Code, § 454.51, subd. (e) (The Commission shall "Ensure that all costs resulting from nonperformance to satisfy the need in subdivision (a) or (d), as applicable, shall be borne by the electrical corporation or community choice aggregator that failed to perform.")
[105] D.19-11-016 (incremental resource adequacy procurement requirement is based on load).
[106] Pub. Util. Code § 454.53, subd. (a).
[107] D.19-11-016, p. 28.

3. The Commission fails to minimize impacts on ratepayers' bills.

The Decision fails to minimize impacts on ratepayers' bills as required by law by failing to ascertain whether the additional 3,300 MW it ordered to be procured will bring resource adequacy reserves well beyond the established reserve requirement range.[108] When it established the 15-17% reserve requirement range, the Commission found that a "15-17% reserve level…strikes an appropriate balance for ensuring reliable service by providing incentives to encourage the retention of existing resources, where as setting reserves at a higher level could require the utilities to make short-term investment decisions inconsistent with the Energy Action Plan's preferred 'loading order' of new resources."[109] The Commission also acknowledged at the time that a higher reserve could sacrifice cost and environmental concerns:

> …there is a broad range of resource applications and technologies that California can rely on to meet its reserve levels. The Energy Action Plan, as well as the scope of this proceeding, established a "loading order" for new resource additions emphasizing increased energy efficiency, demand response/dynamic pricing, and renewable energy. The development, timing, and calculation of a reserve level can have a significant effect in promoting (or deterring) development of these new resources. As FERC recently noted in its order on the ISO's proposed redesign of the California wholesale electric market:
>
> > "[R]ushing to relieve inadequate regional supplies and reduce high regional spot prices may bias construction choices toward supply resources that can be constructed quickly, perhaps sacrificing long-term cost minimization, environmental concerns and fuel diversity goals." [citation omitted].
>
> An appropriate balance should be achieved between meeting reserve requirements expeditiously while seeking to optimize the resource mix/portfolio. Paradoxically, rushing to implement a reserve requirement might further increase California's reliance on natural-gas fired resources, posing a different set of reliability concerns if there are supply constraints or price spikes for this fuel.[110]

[108] Pub. Util. Code, § 454.52, subd. (a)(1)(D).
[109] D.04-01-050, *Interim Opinion* (January 22, 2004), p. 184 (Finding of Fact #18).
[110] D.04-01-050, p. 15.

Despite having previously recognized that too much capacity could deter the new resources required by the Loading Order,[111] and despite the Decision's acknowledgement that "too much system capacity represents unnecessary ratepayer costs,"[112] the Decision simply ignores that ordering unnecessary procurement may very well result in excessive system capacity. That excess constitutes both expensive and unnecessary power procurement which California ratepayers will be required to pay for. As a result, the Commission has failed to proceed in the manner required by Section 454.52(a)(1)(D), which requires the Commission to adopt a process to ensure that LSEs minimize impacts on ratepayers' bills.

V. REQUEST FOR OFFICIAL NOTICE

Pursuant to Rule 13.9, official notice "may be taken of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 et seq."[113] Judicial notice "may be taken" of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state in the United States" and of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."[114]

POC requests that the Commission take official notice of the exhibits listed below. The exhibits are official government acts and their existence is "not reasonably subject to dispute and are capable of immediate and accurate determination by resort to" the websites of the City of Los Angeles website and the California Water Board.

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[111] D.04-01-050, p. 15; *see also* D.14-12-024, *Decision Resolving Several Phase Two Issues and Addressing the Motion for Adoption of Settlement Agreement on Phase Three Issues* (December 4, 2014), p. 87 (Ordering Paragraph 10) ("Fossil-fueled back-up generation is antithetical to the efforts of the Energy Action Plan and the Loading Order.").
[112] D.19-11-016, p. 15.
[113] Rule 13.9; Cal. Code Regs., tit. 20, § 13.9.
[114] Cal. Evid. Code § 452, subds. (c), (h).

Exhibit A: State Water Resource Control Board Resolution No. 2010-0020, available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2010/rs2010_0020.pdf [last accessed December 13, 2019].

Exhibit B: Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling, as last amended on November 20, 2017, available at https://www.waterboards.ca.gov/water_issues/programs/ocean/cwa316/policy.html [last accessed December 13, 2019].

Exhibit C: Excerpts of Attachment to Report dated 09/11/2019 – Report from City Administrative Officer (CAO), available at http://clkrep.lacity.org/onlinedocs/2019/19-1081_misc_4_09-20-2019.pdf [last accessed December 13, 2019].

Exhibits A and B are relevant to the arguments made herein that the Commission is required to make an environmental determination under CEQA, and to consider the environmental impacts of recommending extensions for the OTC plants and the impacts to disadvantaged communities. Exhibit C is relevant to the arguments made herein that the Commission failed to rely on zero carbon-emitting resources to the maximum extent reasonable or to consider battery-plus-solar alternatives to fossil-fueled resources.

VI. REQUEST FOR ORAL ARGUMENT

Pursuant to Commission Rule 16.3,[115] POC hereby requests oral argument. Oral argument will materially assist the Commission in resolving this application because the application raises issues of major significance . The Decision departs from existing Commission precedent without adequate explanation. The Decision departs from prior Commission decisions which required evidentiary hearings for long term planning proceedings, compliance with state policies such as the OTC policy, the loading order, and reliance on zero-emissions procurement when possible. Additionally, this application presents the following legal issues of exceptional public importance: (1) the Commission should be required to consider solar-plus-battery alternatives to fossil fueled generation; (2) ratepayers should not be required to pay for

[115] Rule 16.3; Cal. Code Regs., tit. 20, § 16.3.

unnecessary procurement and the extension of greenhouse gas emitting and otherwise harmful OTC plants; and (3) the Commission impermissibly exceeded the scope of its proceeding in contravention of Section 1701.1 by including consideration of OTC plants and by deciding that the OTC plants required an operational extension in violation of California water policies.

VII. CONCLUSION

The Commission failed to proceed in the manner required by law with respect to each of the topics raised herein. The Decision is based on conjecture about solar and imported resources, and it fails to consider the limits of the Commission's authority and solar-plus-battery alternatives to fossil-fueled generation. The Commission failed to meet its statutory duty hold evidentiary hearings. The Commission also failed to make the required CEQA determination or consider various other laws and policies before deciding to pursue the OTC plants. The requisite findings of fact were not made with respect to reducing greenhouse gas emissions and other pollutants as required by law; and the findings relating to additional procurement and extending the life of the OTC plants are not supported by substantial evidence. The Decision also conflicts with the Commission's prior decisions and orders and the Commission's own rules. For the foregoing reasons, POC requests that its application for rehearing be granted.

Respectfully submitted,

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