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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.

Rulemaking 20-05-003

**ADMINISTRATIVE LAW JUDGE'S RULING SEEKING  
COMMENTS ON BACKSTOP PROCUREMENT AND  
COST ALLOCATION MECHANISMS**

**Summary**

This ruling seeks comments from parties related to required procurement identified by the Commission as part of the integrated resource planning (IRP) process. The first instance of this type of procurement was identified in Decision (D.) 19-11-016, though it is likely that similar needs will be identified by the Commission in the future.

Two topics are addressed in this ruling:

- 1) Cost allocation policy and mechanisms for procurement conducted by one integrated resource planning load-serving entity (LSE) on behalf of another; and
- 2) A backstop procurement mechanism in the event that a non-utility LSE with a procurement obligation fails to secure the required resources.

Comments from parties are due to be filed and served no later than July 1, 2020, with reply comments no later than July 17, 2020.

## **1. Background**

D.19-11-016 required all LSEs subject to the Commission's IRP authority to procure their proportional share of 3,300 megawatts (MW) of resource adequacy capacity over a three-year period beginning in 2021, to ensure reliability of electricity supplies.

Non-utility integrated resource planning (LSE)s were given the option to self-procure their required capacity or to opt out and have the incumbent utility procure the capacity on their behalf, with the costs of that procurement being allocated on a basis similar to the cost allocation mechanism (CAM) established in D.06-07-029 and D.14-06-050. LSEs had only the option to opt out entirely for the full amount of their requirement or not; partial opt-out options were not allowed for this tranche of procurement.

D.19-11-016 also identified the risk that LSEs could choose to self-procure resources but could ultimately fail to do so in whole or in part, for a variety of reasons. This situation would result in the need for additional resources to be procured on an emergency basis, potentially at higher cost. Thus, there would be a need for backstop procurement, with an associated cost allocation policy and mechanism that may or may not be different from the one utilized for LSEs who opted out of procuring in advance.

A workshop on these topics was held on February 3, 2020, which included robust stakeholder discussion of the options for both cost allocation and backstop procurement. This ruling solicits further structured comments from parties to help the Commission set affirmative policy so LSEs are aware of their obligations and requirements, both for the procurement required by D.19-11-016, and potentially for any subsequent similar requirements made by the Commission.

## **2. Backstop Procurement Mechanism**

The backstop procurement mechanism contemplated by D.19-11-016 assumes that backstop procurement is needed when LSEs that planned to self-procure their required capacity fail to do so for a variety of potential reasons. D.19-11-016 determines that, if this happens, the Commission may order the relevant investor-owned utility (IOU) to conduct procurement on behalf of the LSE that has failed to procure its allocated share of capacity and/or on behalf of its customers. This ruling seeks feedback from stakeholders on a proposed backstop mechanism that addresses when and how to determine that the procurement efforts of community choice aggregators (CCAs) and electric service providers (ESPs) who elected to self-procure have failed, and how IOUs may be directed to conduct backstop procurement. The mechanism through which IOUs will recover costs associated with backstop procurement is addressed in Section 3 of this ruling.

D.19-11-016 provides the following context relevant to backstop procurement:

- “the IOUs will be the backstop providers of the capacity if the CCA or ESP elects not to self-provide the capacity” (p. 66)
- “if an LSE does not procure its required share of the capacity requirements in this decision, our recourse will be to require the IOU to procure on behalf of the LSE in its territory, and then have the costs of that procurement allocated to the customers of the LSE that is deficient, through the use of a cost allocation mechanism, potentially as modified in the future to address this scenario” (p. 60)
- “by the time we determine noncompliance from any other LSEs that do not procure, time will be extremely short to procure and bring online the needed reliability resources,

and this type of “just in time” procurement is typically quite expensive” (p. 38)

- “if an LSE elects to provide its own capacity, it should be responsible for the full requirement. Partial self-provision is not something we are contemplating here” (p. 67)
- “the central procurement entity discussion for purposes of local resource adequacy procurements in the resource adequacy proceeding is ongoing, and could be used as a model mechanism for system resource adequacy as well” (p. 36)

Accordingly, the backstop mechanism proposed in this ruling addresses the following principles established by D.19-11-016:

- The mechanism should be put in place as soon as possible, to help LSEs and developers understand the risks of project delay or failure.
- The determination of when backstop procurement is required should be made early enough for the associated IOU to conduct procurement that comes online by, or as soon as possible after, August 1 of 2021, 2022, and 2023, for each of the three tranches of required procurement.
- The mechanism should not disincentivize self-procuring LSEs from being successful with their full procurement requirement.

Key to the design of the backstop mechanism are questions of when and how it should be determined that backstop procurement is required. To address this question, the table below proposes trigger points, which are dates based on estimates of typical project development and contracting timelines for resource types relevant to D.19-11-016. On the trigger date, LSEs would be required to make a formal compliance filing in the proceeding, with a showing including the indicated information (some of which may be filed confidentially), in order not to trigger backstop procurement.

<b>Resource Milestone</b>	<b>Proposed Trigger Point<sup>1</sup></b>	<b>Proposed Showing Requirement, in formal compliance filing</b>
<p><u>Milestone #1:</u> Contracts for new construction; or description of “good faith” progress for demand response, imports or sales of excess resources between LSEs</p>	<p>September 1, 2020</p>	<ul style="list-style-type: none"> <li>• Contract(s) for incremental resources included in LSE’s Integrated Resource Plan (IRP) filed on or before September 1, 2020. If contracts are with another LSE that has procured excess incremental resources, the counterparty LSE’s IRP filing must indicate this transaction and must show that they meet their procurement requirements after subtracting the excess procurement they have resold.</li> <li>• While contracts for new generation or storage construction must be in place by this milestone, descriptions of anticipated resources and negotiation status for <u>other</u> allowable resources not under contract by this milestone (e.g., demand response, imports, or purchases of excess procurement from other LSEs) are acceptable at this time.</li> </ul>

<sup>1</sup> Table reflects Procurement Tranche 1 dates. Milestones for Tranches 2 and 3 would be one and two years later, respectively.

<b>Resource Milestone</b>	<b>Proposed Trigger Point<sup>1</sup></b>	<b>Proposed Showing Requirement, in formal compliance filing</b>
<u>Milestone #2:</u> Notice to Proceed for new construction and final contract deadline for demand response, imports, or sales of excess new resources between LSEs	February 1, 2021	<ul style="list-style-type: none"> <li>• For new construction, evidence of Notice(s) to Proceed.</li> <li>• Contracts for other forms of allowable incremental IRP procurement (<i>e.g.</i>, demand response, imports, or sales of excess new resources between LSEs) that were not under contract by September 1, 2020.</li> </ul> <p>As noted in the September 1, 2020, milestone, if contracts are with another LSE that has procured excess incremental resources, the counterparty LSE's IRP filing must indicate this transaction and must show that they meet their procurement requirements after subtracting the excess procurement they have resold.</p>
<u>Milestone #3:</u> Commercial operation date	August 1, 2021	<ul style="list-style-type: none"> <li>• For new construction, independent verification that resource is online and fully commissioned.</li> </ul>

For the trigger points shown in the above table, all milestones would need to be achieved by an LSE to avoid backstop procurement being required for the applicable tranche of procurement. Compliance would be considered on a resource-specific basis, and may be partial since an LSE may succeed in

developing some but not all of their required capacity. For example, an LSE could be successful in developing one type of resource, while failing to develop another. Alternatively, an LSE could be successful in contracting for some of its obligation, but not all of it. Upon failure being demonstrated at one of the above trigger points, Commission staff would have a maximum of 30 days to informally notify the deficient LSE that backstop procurement will be necessary, and to notify the relevant IOU to commence backstop procurement for the capacity of the failed resource or capacity amount only. A formal Administrative Law Judge and/or Commissioner ruling would also be issued in parallel, memorializing the backstop procurement requirements.

IOUs would begin conducting backstop procurement if Commission staff confirms failure based on any of the proposed trigger points, though to minimize potential “just in time” procurement cost premiums, LSEs would also be encouraged to proactively communicate procurement failures and the need for backstop procurement informally and/or formally as soon as the need is known to the LSE.

## **2.1. Questions for Parties**

1. Do the proposed trigger points align with typical and realistic development and contracting timelines for resource types relevant to D.19-11-016? If not, propose alternative milestones and trigger points.
2. Are the showings for each milestone practical and effective? If not, explain why not and propose alternatives.
3. Should showings for demand response and imports be required on August 1, 2021, beyond those that LSEs are required to make in the resource adequacy proceeding?
4. Is the third milestone’s trigger point (commercial operation date by August 1, 2021) helpful in attempting

to best meet D.19-11-016's requirements in the event of a resource failure? If it is too late to address D.19-11-016 goals, what other options should be considered to address late-identified failure? If it is too soon to assume the complete failure of a resource that has successfully met the first and second trigger points, how could the backstop mechanism be improved to address D.19-11-016 goals?

5. The proposal above contemplates backstop procurement within each procurement tranche, which is a different approach than the Commission took in D.19-11-016, which did not allow LSEs to elect in advance to "partially self-provide." Comment if you disagree with this proposal and indicate why. In your response, explain how a successfully developed resource meeting part of an LSEs obligation should be treated if the IOU backstopped fully for a particular tranche of procurement (or for all three tranches, if you believe that any failure should trigger full procurement, not just procurement for the tranche in which there was partial failure).
6. How should the potential for a resource to fail to meet one trigger point, but then catch up and successfully meet later trigger points, be addressed by the backstop mechanism? In your response, include a discussion of how to treat the costs associated with an IOU commencing backstop procurement for a resource that ultimately ends up being developed by the original LSE.
7. For new generation or storage resources, according to the proposal, signed and approved contracts would be required on or before the first trigger point. This proposal contemplates that LSEs may seek to transact with one another by way of reassigning these contracts, up until the first trigger point (September 1, 2020), after which backstop procurement would commence to the extent that individual self-procuring LSEs' showings are short of their D.19-11-016 requirements. Is this date too



early? If so, explain why and propose how the backstop mechanism should be modified.

8. Should an extension to one or more of the identified trigger points be allowed? If so, what criteria would need to be met to grant the extension and how long of an extension would be reasonable? Why?
9. Are the steps regarding the communication and determination of procurement failure, and the direction to relevant IOUs to conduct backstop procurement, practical and feasible? If not, suggest improvements, including consideration of potential confidentiality issues.
10. Should there be a deadline for IOUs to commence backstop procurement activities? If so, when and why?

### **3. Cost Allocation**

According to the provisions of D.19-11-016, all LSEs were required to procure their proportional share of the 3,300 MW of capacity required by the decision, unless the LSE opted-out of the required procurement in its February 18, 2020 progress report also required by the decision. On February 18, 2020, ten LSEs formally opted out of conducting the required procurement. In addition, as discussed in the section above, some LSEs that have elected to self-provide their required capacity may actually be unable to do so. The Commission will need to finalize a cost allocation mechanism for both scenarios.

D.19-11-016 contemplated a modified CAM approach for the LSEs who opted out in advance. The decision also included language about non-bypassable charges to LSE customers, which the Commission may wish to modify. A similar modified CAM mechanism may or may not also be appropriate for LSEs who fail to procure the required capacity and/or for their customers.

The February 3, 2020 workshop and associated stakeholder discussion included some initial modified CAM proposals. This ruling request more detailed stakeholder proposals. Based on the initial discussion at the workshop, there appear to be three distinctly different options on which to base a cost allocation (or modified CAM) mechanism:

1. A customer-based mechanism that emulates the CAM as closely as possible (with or without an embedded benchmark resource adequacy value);
2. A customer-based, power charge indifference amount (PCIA)-like, approach, with vintaging; and
3. An LSE-based mechanism.

Strictly speaking, options 2 and 3 above may not conform with the non-bypassable charge language in D.19-11-016. However, this ruling invites any and all workable proposals, regardless of whether they conform strictly to this directional language in D.19-11-016.

In response to this ruling, parties are invited to make proposals, and are encouraged to collaborate on joint proposals, when possible, even if there are some variations. Generally, proposals should endeavor to:

- Meet the spirit of cost causation principles (*i.e.*, that costs are borne by and benefits are credited to the customers on behalf of whom they were procured) while not letting the “perfect be the enemy of the good” if an approach that is short of perfect in meeting the principle significantly simplifies implementation.
- Have customers of opt-out LSEs pay as close to equivalent costs and receive as close to equivalent benefits, per MW, as bundled customers, consistent with the CAM that this mechanism is intended to emulate.
- Be based on publicly-available information, avoiding reliance on confidential or commercially-sensitive information, as much as possible.

Proposals need not include processes for the Commission to track procurement progress. Commission staff plan to review all LSE filings related to the required procurement and communicate any concerns regarding the resources identified directly with the affected LSEs.

### **3.1. Questions for Parties**

In making proposals for cost allocation mechanisms, either individually or jointly, parties should describe all of the steps and principles included in the mechanism fully. Parties should describe in detail whether the proposal addresses cost allocation for procurement obligations from which LSEs opted out in advance or backstop procurement, or both, and how those circumstances differ under the proposal. In providing these descriptions, parties should ensure that their proposals for advance opt-out or backstop procurement cost allocation fully address the following key design questions (though they may do so in any order):

11. Discuss how costs are allocated between IOU, non-IOU LSE, and customers of each. Do the costs follow migrating customers, and if so, how? For instance, are customers tracked when they leave bundled service? Are customers tracked between LSEs? Is the tracking done by customer tags in the IOU billing system, or using another method? Does the proposal use multiple tags for a customer who left a second LSE for a third?
12. Discuss the same questions in Question #11 above, but for benefits instead of costs. If the proposal uses a benchmark resource adequacy value for departing customers, fully explain how it works.
13. If costs and/or benefits are assessed at the LSE level rather than the individual customer level, are they reassessed when a significant amount of load departs? If so, what represents a significant amount of load that would trigger a reassessment? By way of example, the

Commission has treated large amounts of departing load (*e.g.*, new CCA formation) differently from small, historically-predictable departures, in its approach to applying non-bypassable charges in the past (*See*, for example, D.08-09-012, Section 4.1).

14. In the event that an IOU procures resources that provide energy in addition to capacity, how are the costs and benefits of this energy (including any renewables portfolio standard and/or greenhouse gas-free credits) charged or credited to non-IOU LSE customers?
15. How would charges appear on the bills of non-IOU LSE customers (*e.g.*, for a CAM-like proposals, would they appear as a “rider to the existing CAM rider”)? Would the charge be included in the New System Generation Charges or delivery charge? (Note that the customers of successful self-procuring LSEs will presumably be charged in the generation portion of their bills.) [in reply comments, IOUs should respond to the proposals of other parties, in terms of how it would work with their billing systems.]
16. If the proposal uses a vintaging mechanism, fully explain how it works.
17. Discuss the effect on IOUs and bundled customers in the event of an LSE bankruptcy. What will ensure payment of procurement costs on behalf of the LSE and their customers? What if the bankruptcy involves the IOU?
18. Is there an action that a customer of an LSE could take to “escape” their cost obligation for this procurement (*e.g.*, by migrating first to a CCA, then to an ESP, or by installing self-generation)? Explain how these potential circumstances would be addressed.
19. Describe any competitive effects of the proposal (*e.g.*, would it make some LSEs appear more expensive than

others, beyond any actual differences in procurement costs between the LSEs).

20. What are the estimated “order of magnitude” costs of implementing this proposal, including billing system costs for IOUs, other administrative costs, and potential debt equivalence? Approximately what percentage of the total cost of procurement are these costs expected to be? Who would bear these administrative/implementation costs?
21. If the cost of the billing and/or tracking in a proposal requires changes in the IOU billing system, when would that be achieved under the proposal, and what will be done until those changes are completed?
22. Are there any elements of the proposal that would require modifications to the language of D.19-11-016 or any other Commission decision? Explain fully.

**IT IS RULED that:**

1. Interested parties may file and serve comments and/or proposals in response to this ruling and the questions included in Sections 2.1 and 3.1 by no later than July 1, 2020.
2. Interested parties may file and serve reply comments in response to this ruling and responses of other parties by no later than July 17, 2020.

Dated June 5, 2020, at San Francisco, California.

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/s/ JULIE A FITCH  
Julie A. Fitch  
Administrative Law Judge