



STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

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PUBLIC UTILITIES COMMISSION

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SAN FRANCISCO, CA 94102-3298

November 13, 2020

Agenda ID #18974
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 20-05-003:

This is the proposed decision of Administrative Law Judge Julie A. Fitch. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's December 17, 2020 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4)(B).

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:jnf

Attachment

Decision **PROPOSED DECISION OF ALJ FITCH** (Mailed 11/13/2020)

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

**DECISION ESTABLISHING PROCESS FOR BACKSTOP
PROCUREMENT REQUIRED BY DECISION 19-11-016**

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DECISION ESTABLISHING PROCESS FOR BACKSTOP PROCUREMENT REQUIRED BY DECISION 19-11-016

Summary

This decision adopts requirements for all load-serving entities (LSEs) required to procure electric capacity by Decision (D.) 19-11-016, that did not opt out of providing their assigned capacity, to file bi-annual updates of their procurement progress relative to contractual and procurement milestones defined in this decision. The compliance filing information is required on February 1 and August 1 of 2021, 2022, and 2023. The decision also lays out general criteria for Commission staff to use in reviewing the procurement information provided by LSEs.

After review of contractual progress of all LSEs self-providing capacity toward the D.19-11-016 procurement requirements, Commission staff are required to bring a resolution before the Commission for a vote, recommending initiation of backstop procurement by particular investor-owned utilities if the procurement activities of other self-providing LSEs with customers in their service territory are determined to be falling short of procurement goals.

The details of the cost allocation of any backstop procurement required by the Commission will be addressed in a subsequent decision. This proceeding remains open.

1. Background

To ensure reliability of electricity supplies, Decision (D.) 19-11-016 required all load-serving entities (LSEs) subject to the Commission's integrated resources planning (IRP) authority under Sections 454.51 and 454.52 of the Public Utilities

Code to procure their proportional share of 3,300 megawatts (MW) of resource adequacy capacity over a three-year period beginning in 2021.

Non-utility LSEs 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 to “self-provide” all of their own capacity; partial opt-out options were not allowed for this particular procurement obligation.

D.19-11-016 also identified the risk that LSEs could choose to self-provide 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 options for both cost allocation and backstop procurement. On June 5, 2020, an Administrative Law Judge’s (ALJ’s) ruling (ALJ Ruling) was issued, including backstop and cost allocation process recommendations from Commission staff, and seeking comments from parties in response to the proposals contained in the ALJ Ruling.

On July 22, 2020, the following parties filed comments in response to the ALJ Ruling: Alliance for Retail Energy Markets (AReM); American Wind Energy Association of California (AWEA); California Community Choice Association

(CalCCA); California Large Energy Consumers Association (CLECA); Public Advocates Office of the California Public Utilities Commission (Cal Advocates); Calpine Energy Solutions, LLC (Calpine Solutions); Constellation New Energy, Inc. (Constellation); CPower, California Efficiency and Demand Management Council (CEDMC), and Enel North America, Inc. (Enel), jointly; Green Power Institute (GPI); Pacific Gas and Electric Company (PG&E); Protect Our Communities Foundation (PCF); San Diego Gas & Electric Company (SDG&E); Shell Energy North America (Shell); and Southern California Edison Company (SCE).

Reply comments in response to the ALJ Ruling were filed on August 7, 2020 by the following parties: AReM; AWEA; CalCCA; Constellation; GPI; PCF; PG&E; SCE; SDG&E; The Utility Reform Network (TURN); and Women's Energy Matters (WEM).

This decision addresses only the backstop procurement process and requirements. A subsequent decision will address the associated cost allocation issues.

The comments and/or reply comments of Shell, Calpine Solutions, Constellation, and CLECA addressed cost allocation issues only, so they are not further discussed in this decision, but will be included in the subsequent decision on cost allocation.

2. Initial Commission Staff Proposal for the Backstop Procurement Process

The backstop procurement mechanism contemplated by D.19-11-016 assumed that backstop procurement would be needed when LSEs that planned to self-provide their required capacity were unable to do so for a variety of

reasons. D.19-11-016 determined 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 construct requires defining when and how to determine that the procurement efforts of community choice aggregators (CCAs) and electric service providers (ESPs) who elected to self-provide their capacity requirements have failed, and how IOUs may be directed to conduct backstop procurement.

The June 5, 2020 ALJ Ruling contained a process recommended by Commission staff to address the following principles established in 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 procurement required by D.19-11-016.
- The mechanism should not disincentivize self-procuring LSEs from being successful with their full procurement requirement.

To address these principles and define when and how backstop procurement should be initiated, Commission staff proposed trigger points, which are dates based on estimates of typical project development and contracting timelines. On the trigger date, the LSEs would be required to make a formal compliance filing in the proceeding, with a showing including the indicated information, in order not to trigger backstop procurement.

The table below includes the trigger point proposal of Commission staff that was included in the June 5, 2020 ALJ Ruling.

| Resource Milestone | Proposed Trigger Point ¹ | Proposed Showing Requirement, in formal compliance filing |
|--|-------------------------------------|---|
| <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"> Contract(s) for incremental resources included in LSE’s Integrated Resource Plan (IRP) filed on or before September 1, 2020. <p>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> <ul style="list-style-type: none"> 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. |

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

| | | |
|--|-------------------------|---|
| <p><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</p> | <p>February 1, 2021</p> | <ul style="list-style-type: none"> • For new construction, evidence of Notice(s) to Proceed. • Contracts for other forms of allowable incremental IRP procurement (e.g., demand response, imports, or sales of excess new resources between LSEs) that were not under contract by September 1, 2020. <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> |
| <p><u>Milestone #3:</u> Commercial operation date</p> | <p>August 1, 2021</p> | <ul style="list-style-type: none"> • For new construction, independent verification that resource is online and fully commissioned. |

As proposed, 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 annual tranche of procurement. Compliance would be reviewed by the Commission and determined on a resource-specific basis, and could 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.

Commission staff proposed that, 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 ALJ and/or Commissioner ruling was proposed to be issued in parallel, memorializing the backstop procurement requirements.

Commission staff proposed that the IOU would begin conducting backstop procurement if Commission staff confirmed 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.

3. Comments of Parties

Overall, most parties commenting on the Commission staff’s backstop procurement trigger proposal contained in the June 5, 2020 ALJ ruling and summarized in Section 2 above generally supported the proposal. GPI, PCF, and WEM generally opposed the proposal, primarily arguing that there is no need to reinvent existing procurement compliance arrangements that are already provided by the resource adequacy program (GPI, PCF, and WEM) and that the suspected incremental resource adequacy need may be narrowed by the impacts of the COVID-19 pandemic (GPI and WEM).

3.1. Comments Related to Triggers and Milestones

Most parties commented in support of having milestones and triggers similar to those suggested by Commission staff, with some variations. SDG&E supported having multiple milestones required, but only one determination per year for backstop procurement being required of the IOUs. SDG&E also suggested that the first milestone should be the trigger for all three tranches of procurement, not just for 2021. PG&E originally proposed one annual filing and one annual backstop determination.

SCE proposed a revised trigger for the first milestone, suggesting January 1, 2021 for the 2022 and 2023 tranches. PG&E, CalCCA, and TURN also supported this proposal, though CalCCA suggested an amendment to include the 2021 tranche of procurement in the same milestone, since otherwise the staff-proposed milestone of September 1, 2020, would be in the past due to the passage of time.

SCE also commented that the second and third milestones should only be check-ins, but not trigger points. CalCCA suggested that an LSE should be required to file a Tier 2 advice letter if their procurement is delayed, seeking an extension with appropriate justification and a plan for remediation.

SCE also suggested that deficient LSEs should be required to submit a remediation plan for how they will bring resources online in 30-90 days. In addition, SCE recommended and TURN agreed that showings required at each milestone should include site control, interconnection status, and other standards.

Cal Advocates suggested that the milestone dates for the second and third tranches of procurement were too late.

CalCCA commented that the requirement for a “notice to proceed” should be broadened to include other potential contractual language related to start of construction on a new project.

PG&E added that the Commission should include the senior executive attestation requirement for the showings submitted. Cal Advocates and AReM also suggested that the independent verification requirements for LSEs should be more specifically defined.

AReM was generally concerned that too much information would be required in the milestone showings. AWEA was concerned to ensure the confidentiality of contract information.

CEDMC requested using criteria adopted in D.16-11-036 to be used for showings including demand response resources.

GPI was concerned with showing requirements related to imports, suggesting that some portion should be required to be shown at the first trigger point or else a separate schedule should be established. GPI also maintained that both options should be done in alignment with normal system resource adequacy requirements.

Finally, the staff proposal did not propose a deadline for when backstop procurement needed to be online and delivering. PG&E suggested that backstop procurement would require a 24-month timeline, while CalCCA opposed this suggestion.

3.2. Comments Related to Partial Backstop Procurement

Several parties also commented on whether “partial backstop” procurement should be allowed, meaning backstop procurement within each annual tranche of the D.19-11-016 requirements.

CalCCA commented that the backstop requirements should be instituted by tranche. SCE and SDG&E disagreed, arguing that once backstop procurement requirements are triggered, the IOU should take over the rest of the procurement responsibility for all of the capacity required by D.19-11-016. AReM supported the possibility of “partial backstop” but noted that it may cause severe equity and fairness concerns. PG&E’s reasoning for rejecting “partial backstop” procurement for each tranche was because of the multiple solicitations that would be required by each IOU on an annual basis to perform the backstop procurement duties.

SCE and SDG&E also argued that an IOU should not be required to stop its backstop procurement efforts once they are underway, since this would result in wasted efforts and expenses. AReM argued that this possibility should be considered, if an LSE can catch up on its required procurement and IOU procurement can be cancelled. AReM further suggested that the IOU could be compensated for its costs, even if the ultimate procurement is cancelled. CalCCA argued that this situation should be treated on a case-by-case basis, depending on the circumstances.

3.3. Comments on Possibility of Extensions

Several parties, in their comments, supported allowing extensions to deadlines for LSEs whose showing included deficiencies in capacity required.

SDG&E suggested allowing up to two weeks, if this allows the Commission not to initiate backstop procurement. AReM suggested up to one month, or three months if there is a Force Majeure event. CEDMC suggested extensions of up to one month for all milestones for demand response resources. CalCCA suggested extensions on a case-by-case basis based on the reason for the delay, project feasibility, revised timeline, and impact on system reliability.

Meanwhile, Cal Advocates suggested that backstop procurement by the IOUs be initiated within ten days of a determination by the Commission, a suggestion which was supported by AWEA, but opposed by PG&E as too short.

4. Discussion and Conclusion

As a starting point, we disagree with those parties who argue that the resource adequacy program provides enough structure to address compliance with the capacity requirements of D.19-11-016. That decision structured a procurement requirement that, although it required capacity to fit into the resource adequacy paradigm, is structured somewhat differently than the typical annual resource adequacy compliance showings. Therefore, we find that we need to set out a process for determining whether to trigger backstop procurement for purposes of the capacity required in D.19-11-016.

We also disagree that this incremental capacity has been made unnecessary by the impacts of the COVID-19 pandemic. The August 2020 reliability-related rotating outages demonstrated the continued need for system capacity, despite somewhat altered load patterns related to the COVID-19 pandemic.

In crafting a final structure for backstop procurement for the capacity required by D.19-11-016, we are balancing the urgency of capacity procurement

with the desire not to duplicate efforts or costs. On the one hand, the urgency to ensure successful procurement has only been heightened by the August 2020 rotating outages, caused in part by the tight availability of electricity capacity on the system. On the other hand, if a non-IOU LSE is intending to self-provide capacity, and is suffering only minor delays or other obstacles, it may not make sense to ask an IOU to step in and conduct procurement instead, creating additional costs and potential for duplicating efforts.

Thus, although we are adopting a basic structure in this decision, as detailed further in this section, there will also be a need for some judgment to be used in determinations to order backstop procurement, in ways that may not be able to be readily assessed in theory up front. Thus, we adopt a structure, but also will require Commission staff to bring forward resolutions for Commission votes if backstop procurement is recommended, to ensure the Commission has a chance to weigh the factors involved and render judgment depending on the particular circumstances that occur as LSEs proceed to acquire additional electric capacity. In this decision, we include general criteria for Commission staff to utilize in bringing forward backstop procurement recommendations.

The basic structure we adopt is as follows. Twice a year, on February 1 and August 1, between 2021 and 2023, each self-providing LSE (including the IOUs) will be required to make a compliance filing that includes information about its status in procuring the capacity required in D.19-11-016. Thus, each self-providing LSE will make filings on February 1, 2021, August 1, 2021, February 1, 2022, August 1, 2022, February 1, 2023, and August 1, 2023, detailing the status of its procurement to satisfy the D.19-11-016 capacity requirements.

The compliance filings shall be filed in this docket, and also provided to Commission staff simultaneously. Because for many LSEs the filings will necessarily contain contractual information that is subject to confidential treatment, the LSEs may make their compliance filings accompanied by motions to file under seal, but must justify the request for confidentiality and also include a public version that provides meaningful information about procurement status for each of the three years (2021-2023), at least in aggregated form.

Unlike Commission staff's initial proposal, we will require that the showings at each date include information about all three years of procurement requirements beginning February 1, 2021, to the extent such milestone information is available. This is essentially the proposal in SCE's comments for the first milestone, as modified by CalCCA's suggestion to deal with 2021 procurement, though we are adding requirements to show progress toward all three milestones for all three years in each compliance filing.

The milestones will still be defined as suggested by Commission staff, in the following manner:

Milestone 1: For real increases via new or expanded net qualifying capacity (NQC) as defined by the California Independent System Operator (CAISO), this milestone is defined by the LSE demonstrating having a contract in place with a resource developer for the provision of a commercial technology, an interconnection agreement with a demonstrated path toward deliverability by the online date required by D.19-11-016, signed land leases or title deeds demonstrating project site control, and a project timeline. For this milestone, the LSE may also include intended procurement from demand response resources that will not result in total demand response for the LSE in excess of the resource

adequacy program demand response maximum cumulative capacity bucket, as well as allowable imports, as limited by D.19-11-016 to no more than 20 percent of their requirement in each tranche.

Milestone 2: Meeting this milestone is demonstrated by a showing of a “notice to proceed” or similar contractual evidence of construction commencement for new construction projects that will result in new NQC as of D.19-11-016 and available by August 1 of each year (2021-2023), as well as executed contracts for demand response, imports, and/or sales of excess resources between LSEs.

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

All LSEs will be required to show evidence of the amount of capacity reaching each milestone, for all three compliance years (2021-2023) at each of the six compliance filing deadlines in the next three years. LSEs should strive to provide as much information to the Commission as possible about contract and project status, to allow an informed determination about the need for backstop procurement as early as possible.

Although LSEs are required to provide information about all milestones for all three years in each compliance filing, Commission staff will evaluate the need for backstop procurement to be required by the Commission based on progress towards Milestones 1 and 2 for the year in which the capacity is required to come online by August 1. For example, as part of the February 1, 2021 compliance filing, an LSE may include information showing that it does not have enough

capacity under contract and with a “notice to proceed” to meet its August 1, 2022 capacity obligation. But that situation will only result in a recommendation for backstop procurement if the same deficiency for the August 1, 2022 required capacity still exists in the February 1, 2022 compliance filing.

We will also slightly modify the staff proposal for when backstop procurement may be triggered, and how. In terms of when, there will be a total of four dates which may trigger backstop procurement requirements of IOUs.

The four dates on which backstop procurement may be triggered are after each of the February 1 compliance filings required over the next three years, and a fourth trigger point at August 1, 2023, to address any procurement that has not been achieved as of that date, for all of the required 3,300 MW of capacity ordered in D.19-11-016. We choose these trigger points because it will likely be unreasonable and unrealistic to have IOUs conducting multiple requests for offers (RFOs) per year for purposes of this backstop requirement, in addition to their regular capacity procurement to serve their own load during this time period. At the same time, there will be a need to ensure that enough capacity is procured to achieve the requirements of D.19-11-016 in the end. Therefore, the fourth trigger may be considered a true-up or clean-up of previous procurement efforts that may not have achieved their full requirement levels.

Backstop procurement will be triggered by Commission staff reviewing the compliance filing showings of all self-providing LSEs, and bringing a resolution on its own motion before the Commission to require a certain amount of backstop procurement. The resolution brought by Commission staff will specify the amount of backstop procurement required of a particular IOU, on behalf of which LSE, and for which of the three tranches (2021, 2022, or 2023).

We are selecting this approach because it balances the need for a relatively quick turnaround analysis with the importance of having the full Commission weigh in on requiring backstop procurement, since it will be difficult to anticipate completely up front the kinds of issues that may be raised by the LSEs' compliance filings.

We are not adopting, as recommended by several parties, automatic extensions of between two weeks and three months. Rather, Commission staff will evaluate individual circumstances of specific LSEs and specific contracts and recommend to the Commission whether backstop procurement is warranted or whether LSEs should be allowed to continue pursuing contracts that are slightly but reasonably delayed. Commission staff may make such determinations public, but staff do not need to make a formal written determination to accept a delay as reasonable and warranted. Instead, staff's failure to introduce a resolution for Commission consideration ordering backstop procurement will serve as acceptance of the identified delay.

Likewise, we will not make a blanket determination at the outset about whether "partial" backstop procurement will be triggered or not. Because we are providing for multiple trigger dates, it is likely that "partial" backstop will occur in the case of some LSEs, perhaps for some years and not others, depending on the progress of individual procurement efforts.

Once the Commission evaluates Commission staff's recommendations and adopts a resolution requiring backstop procurement amounts for any IOU, that IOU will be required to initiate an RFO no later than 60 days after the Commission issues the resolution. Several parties asked for a 30-day requirement; the IOUs preferred no deadline, so 60 days is a reasonable

compromise. The exception to this requirement to issue an RFO will be for the fourth and final trigger, where an IOU may choose to initiate a new RFO or possibly pick or negotiate with additional offers from a prior RFO to round out any procurement required after August 1, 2023, to be online by Summer 2024.

Any RFO issued by an IOU to select backstop procurement should target capacity being in place by summer of the following year. So for example, if after the February 1, 2021 trigger date the Commission adopts a resolution by May 2021 requiring a certain amount of backstop procurement, the RFO will be required to be issued by July 2021, for deliveries to begin during the summer of 2022. The IOUs conducting the backstop procurement will have some discretion to adjust the timing of the deliveries depending on the offers received and their costs, to avoid raising costs unnecessarily or too narrowly constraining the types of projects that can reasonably compete to deliver the capacity. The backstop procurement costs will be the full responsibility of the deficient LSE for the duration of the contract.

Also generally speaking, as discussed above, Milestone 2 and 3 triggers of backstop procurement requirements will be for the tranche of procurement required by August 1 of the year in which the showing is made and not for subsequent years. However, Commission staff will review all of the materials provided by all LSEs on each compliance filing date, and if there are systematic issues with particular LSEs and/or if an LSE itself requests additional backstop assistance covering additional years, Commission staff will have the discretion to recommend backstop procurement for future years based on the information available in the most recent compliance filing.

We also note that the absence of a backstop trigger on the August 1 compliance dated required in R.19-11-016 for each of the years 2021-2023 does not relieve any LSE of its obligation to comply with D.19-11-016. The commission may still initiate compliance and/or enforcement actions regardless of whether or not backstop procurement is triggered to be conducted by an IOU by the terms of this decision.

Other criteria that Commission staff will use to evaluate the showings of each LSE include the following categories and factors:

Resource-specific considerations:

- Whether there is complete contract failure or delay
- Length of delay estimated
- Whether a project has failed to meet multiple milestones
- 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 documentation.

The above factors are not a complete list, but represent an indicative set of criteria that should be looked at when recommending a determination for backstop procurement being required by the Commission.

Commission staff will also check information included in the first compliance filing (February 1, 2021) against information included in individual IRP filings on September 1, 2020, or subsequently updated in their resource data

templates required with their individual IRPs. If there are discrepancies or inconsistencies after cross-checking and reviewing the attestations by each LSE's senior executive, Commission staff will request that LSEs submit explanatory documentation.

Once the Commission has adopted a resolution to require backstop procurement by an IOU, the IOU's costs of procuring the backstop procurement, along with its administrative costs in conducting the backstop procurement, will be allocated in the CAM-like fashion to be detailed in a subsequent decision. The original LSE on whose behalf the IOU is undertaking backstop procurement may, of course, continue to procure electric capacity on its own, but once the backstop procurement is authorized/required by the Commission, the IOU is obligated to follow through and will have its costs recovered for the length of the contract period for the resources procured. This is to reduce the risk that efforts and costs are duplicated by multiple LSEs and that IOUs are not left with stranded costs in their efforts to comply with Commission requirements on behalf of LSEs who naturally compete to deliver electricity to the same customers.

Finally, as with all capacity procurement associated with the requirements of D.19-11-016, once an IOU has conducted backstop procurement, it shall bring a Tier 3 advice letter to the Commission for approval of the contracts associated with that backstop procurement. This will ensure that the Commission reviews and approves of the reasonableness of this procurement and assigns the full costs, for the duration of the contract, to the LSE and/or customers on whose behalf the procurement has been conducted.

5. Comments on Proposed Decision

The proposed decision of Administrative Law Judge Fitch in this matter was mailed to the parties in accordance with Pub. Util. Code section 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by _____ on _____. Reply comments were filed by _____ on _____.

6. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Julie A. Fitch is the assigned ALJ in this proceeding.

Findings of Fact

1. Decision 19-11-016 required all LSEs subject to the Commission's IRP authority to procure their proportional share of 3,300 MW of resource adequacy capacity over a three-year period between 2021 and 2023.

2. D.19-11-016 found that the 3,300 MW of capacity is needed to maintain system reliability between 2021 and 2023.

3. Rotating outages initiated by the California Independent System Operator in August 2020 heighten the importance of electric capacity to support electric system reliability.

4. LSEs may try, in good faith, to procure their share of electric capacity required in D.19-11-016, but may fail for any number of reasons.

5. D.19-11-016 provided that if backstop procurement was needed for LSEs who intended to provide their own share of capacity but failed to do so, the IOUs would be required to step in and provide backstop procurement.

6. In a June 5, 2020 ALJ Ruling, Commission staff recommended defined milestones to be reported by LSEs toward their D.19-11-016 capacity

procurement, and trigger dates on which the Commission should require documentation to make a determination about the need for backstop procurement.

7. The normal resource adequacy annual compliance regime does not fully address the issues associated with determining the need for backstop procurement associated with D.19-11-016.

8. Procurement progress is characterized generally by milestones toward ultimate provision of capacity by the LSEs, including, but not limited to, a signed contract with a resource developer for provision of a commercial technology, an interconnection agreement with a demonstrated path toward project deliverability by the required online date, signed land leases or title deeds demonstrating project site control, a project timeline in a signed contract, documentation of a “notice to proceed” or other evidence of construction commencement (for new construction projects), and evidence of a project being in service and capable of delivering energy.

9. Commission staff, after review of LSE compliance materials, is always authorized to bring a resolution before the Commission on its own motion.

10. D.19-11-016 requires IOUs to bring Tier 3 advice letters to the Commission for contracts to provide their own share of the required electric capacity.

11. An IOU conducting backstop procurement on behalf of another LSE will incur both procurement and administrative costs associated with performing this function.

Conclusions of Law

1. The Commission must determine when and how the procurement efforts of LSEs have failed with respect to the capacity procurement requirements of

D.19-11-016, and an IOU is required to step in and conduct backstop procurement.

2. In determining the structure of backstop procurement requirements associated with D.19-11-016, the Commission should balance urgency of capacity delivery with the risk of duplicating efforts and costs.

3. Commission staff should recommend the need for backstop procurement based on compliance filings of LSEs, but the Commission itself should make a determination to order an IOU to conduct backstop procurement and have the costs allocated.

4. Requiring biennial procurement status compliance filings on February 1 and August 1 of 2021, 2022, and 2023 should give the Commission adequate information on which to base backstop procurement determinations.

5. All biennial procurement status compliance filings should contain information about procurement activities for all capacity required in D.19-11-016 for 2021, 2022, and 2023.

6. LSEs who wish to file particular contract and status information confidentially should be required to justify the need to file that information under seal, and should also be required to provide aggregated summary information in a public manner so that all parties may assess progress toward procurement requirements of D.19-11-016.

7. It is reasonable for the Commission to define three milestones associated with the August 1 capacity delivery dates required in 2021, 2022, and 2023, as follows:

- (a) Milestone 1: a signed contract with a resource developer for provision of a commercial technology, an identified

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

- (b) Milestone 2: a showing of a “notice to proceed” or similar contractual evidence of construction commencement for new construction projects, as well as executed contracts for demand response, imports, or sales of excess resources between LSEs.
- (c) Milestone 3: evidence of a project being online and capable of delivering energy, or in the case of demand response, load reduction.

8. The Commission should require each compliance filing to contain information addressing the defined milestones in each of the three years for which capacity is required by D.19-11-016 (2021, 2022, and 2023).

9. The Commission should always distinguish between backstop procurement required to serve load of other LSEs and supplemental procurement required to address the IOU’s individual capacity procurement responsibility.

10. It is reasonable to set February 1 of 2021, 2022, and 2023 as the primary trigger dates after which backstop procurement may be ordered by the Commission, as well as August 1, 2023 if additional backstop procurement is determined to be needed at this final compliance date.

11. The Commission should utilize the staff resolution process for recommended backstop procurement after each trigger date, to allow the Commission itself to vote to require backstop procurement to commence.

12. In analyzing whether backstop procurement should be recommended, Commission staff should utilize the general criteria outlined in Section 4 of this decision, evaluating resource-specific considerations and LSE-specific considerations, as well as general procurement conditions.

13. The Commission should not adopt any up-front standards for whether contract extensions should be automatic and for how long; rather, Commission staff should evaluate this situation on a case-specific basis when reviewing the LSE compliance filings.

14. Commission staff should compare information on contracts included in the individual IRPs filed in this docket, as subsequently supplemented or amended, against representations made in compliance filings required by this decision, and request any supplemental information or documentation to explain differences.

15. IOUs being required to conduct backstop procurement should be required to initiate an RFO no more than 60 days after the Commission adopts the resolution requiring backstop procurement, though an RFO may not be required for backstop procurement triggered after the final compliance filing.

16. Backstop procurement initiated in one year should generally aim for capacity to be online and delivering by the summer of the following year.

17. IOUs conducting backstop procurement should have some discretion, based on capacity offers received, to adjust the timing of the deliveries, depending on cost-benefit evaluations.

18. After the Commission requires an IOU to initiate backstop procurement by adopting a resolution brought forward by Commission staff, all administrative and procurement costs associated with the backstop procurement should be

eligible for cost recovery. The manner of such cost recovery will be addressed in a subsequent decision in this proceeding.

19. As with capacity contracted to meet the requirements of D.19-11-016 generally, IOUs should be required to bring Tier 3 advice letters to the Commission for approval of backstop procurement capacity.

O R D E R

IT IS ORDERED that:

1. All load-serving entities with procurement obligations included in Decision 19-11-016 who did not opt out of providing capacity for their customers shall make compliance filings on February 1 and August 1 of 2021, 2022, and 2023 containing information about progress toward achieving the electric capacity procurement requirements for the years 2021, 2022, and 2023. These compliance filings are separate from any other integrated resource planning data filing requirements.

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

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

- (b) Milestone 2: a showing of a “notice to proceed” or similar contractual evidence of construction commencement for new construction projects, as well as executed contracts for demand response, imports, or sales of excess resources between LSEs.
- (c) Milestone 3: evidence of a project being online and capable of delivering energy, or in the case of demand response, load reduction.

3. After review of the compliance filings required in Ordering Paragraph 1 above on February 1, 2021, February 1, 2022, February 1, 2023, and August 1, 2023, Commission staff shall take into account criteria detailed in Section 4 of this decision and bring a resolution before the Commission recommending that an investor-owned electric utility be required to conduct backstop procurement, if warranted.

4. If the Commission adopts a resolution requiring an electric investor-owned utility (IOU) to conduct backstop procurement as contemplated in Decision 19-11-016 and detailed in this decision, that electric IOU shall issue a Request for Offers, if one is needed, within 60 days of the Commission’s adoption of the resolution, or as otherwise specified in the Commission resolution, and shall aim to have the additional capacity online and delivering by the summer of the following year.

5. Once the Commission adopts a resolution requiring an electric investor-owned utility (IOU) to conduct backstop procurement, the administrative and procurement costs of that IOU shall be recoverable in rates and subject to cost allocation treatment that was outlined in Decision 19-11-016 and will be addressed more fully in a forthcoming Commission decision in this docket.

6. Once the Commission adopts a resolution requiring an electric investor-owned utility (IOU) to conduct backstop procurement, the IOU shall bring the contracts associated with the backstop procurement back to the Commission for approval in a Tier 3 advice letter.

7. This proceeding remains open.

This order is effective today.

Dated _____, at San Francisco, California