



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

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Order Instituting Rulemaking to Establish Policies, Processes, and Rules to Ensure Reliable Electric Service in California in the Event of an Extreme Weather Event in 2021.

Rulemaking 20-11-003  
Filed November 19, 2020

**CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE AND SIERRA CLUB'S  
OPENING COMMENTS ON THE PROPOSED DECISION DIRECTING EXPEDITED  
PROCUREMENT**

Shana Lazerow  
Connie Cho  
Communities for a Better Environment  
340 Marina Way  
Richmond, CA 94801  
Tel: (510) 302-0430  
Email: slazerow@cbeocal.org  
ccho@cbeocal.org

*Representing California Environmental Justice Alliance*

Nina Robertson  
Earthjustice  
50 California Street, Suite 500  
San Francisco, CA 94111  
Tel: (415) 217-2000  
Email: nrobertson@earthjustice.org

Katherine Ramsey  
Sierra Club  
2101 Webster Street, Suite 1300  
Oakland, CA 94612  
Tel: (415) 977-5627  
Email: katherine.ramsey@sierraclub.org

*Representing Sierra Club*

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The California Environmental Justice Alliance (“CEJA”) and Sierra Club respectfully submit these comments on the Proposed Decision Directing Pacific Gas & Electric (“PG&E”), Southern California Edison Company (“SCE”), and San Diego Gas & Electric Company (“SDG&E”) to Seek Contracts for Additional Power Capacity for Summer 2021 Reliability (hereinafter “Proposed Decision” or “PD”). These comments are timely filed pursuant to Rule 14.3 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure.

**INTRODUCTION AND SUMMARY**

As currently worded, the Proposed Decision could be interpreted to direct PG&E, SCE, and SDG&E (collectively, “the IOUs”) to contract for additional gas capacity, by allowing procurement of “incremental efficiency upgrades to existing power plants.”<sup>1</sup> The phrase “incremental efficiency upgrades” does not clearly exclude new fossil-fueled capacity, and the PD is thus in error. Fossil-fueled generation produces pollution that impacts public health, contributes to the climate crisis, and directly harms human health.<sup>2</sup> Fine particulate matter, for example, is closely connected to decreased lung function, more frequent emergency department visits, additional hospitalization, and increased morbidity.<sup>3</sup> Any additional pollution is a major

<sup>1</sup> Proposed Decision, p. 5, 11.

<sup>2</sup> Sierra Club Opening Test., p. 3.

<sup>3</sup> Sierra Club Opening Test., p. 4.

problem in California where many of the state’s air basins are in serious, extreme, and/or severe non-attainment for one or more criteria pollutants.<sup>4</sup> Gas plants exacerbate environmental and health harms in California’s most polluted air basins.<sup>5</sup> There are “unique risks that increased gas plant emissions pose to disadvantaged communities, particularly during the COVID-19 pandemic.”<sup>6</sup> Notably, roughly half of California’s gas plants are located in the most disadvantaged communities.<sup>7</sup> A loophole in the PD that could allow additional capacity at these fossil-fueled generators will exacerbate these harms and run counter to California’s climate goals and air quality requirements. The Commission must therefore revise the PD to make clear that its direction does not permit IOUs to contract for any new fossil fuel capacity.

If the Commission does not address this potential loophole for fossil fuel capacity, it should modify the PD to require IOUs to submit applications, or at the very least Tier 3 advice letters, when they seek to procure any “efficiency upgrades.” The PD’s current proposal for Tier 1 or Tier 2 advice letters is in error because it prejudices parties seeking to protest fossil fuel procurement.

In Appendix A to these comments, we include proposed revisions to the Findings of Fact, Conclusions of Law, and Order. We respectfully request that the Commission modify the decision consistent with the changes suggested in Appendix A.

## DISCUSSION

### 1. **The Proposed Decision Erroneously Includes Ambiguous Direction That Does Not Clearly Exclude New Fossil-Fueled Generation Capacity.**

As currently worded, the Proposed Decision risks creating a loophole for new investments in fossil fuel infrastructure, in conflict with California’s climate goals and air quality

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<sup>4</sup> Sierra Club Opening Test., p. 7.

<sup>5</sup> Sierra Club Opening Test., p. 7-10.

<sup>6</sup> Sierra Club Opening Test., p. 2.

<sup>7</sup> Sierra Club Opening Test., p. 9.

requirements. The PD specifies that the following resource types may be considered for procurement:

- “Incremental capacity from existing power plants through efficiency upgrades, revised power purchase agreements, etc;”
- “Contracting for generation that is at-risk of retirement;” and
- “Incremental energy storage capacity.”<sup>8</sup>

Under these terms, the only potentially new incremental gas capacity the PD allows must be from “efficiency upgrades.” Unfortunately, the Proposed Decision errs by failing to provide a benchmark to circumscribe the scope of “efficiency” projects. “Efficiency” by its definition simply means using less energy to perform the same task<sup>9</sup>—it does not mean creating or expanding capacity at an existing gas plant. For this reason, the direction to procure incremental capacity and efficiency upgrades creates an internal conflict. This conflict is evident in the IOUs’ comments in this proceeding. For example, PG&E has suggested either “retrofits or operational changes to existing generation facilities,” which include gas plants, as supply-side options.<sup>10</sup> SCE and SDG&E have both vaguely referred to “upgrades”<sup>11</sup> to their existing gas fleets, which could mean any range of investments in fossil fuel infrastructure. Vague references to retrofits, upgrades, and operational changes may not meet the definition of “efficiency” improvements. Given this demonstrated confusion, we urge the Commission to clarify that the IOUs shall not contract for any new gas capacity.

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<sup>8</sup> Proposed Decision, p. 11.

<sup>9</sup> See, e.g., Environmental and Energy Study Institute, Energy Efficiency (last visited Jan. 26, 2021) <https://www.eesi.org/topics/energy-efficiency/description#:~:text=Energy%20efficiency%20simply%20means%20using,household%20and%20economy%2Dwide%20level>.

<sup>10</sup> PG&E Opening Comments on the Order Instituting Rulemaking, (Nov. 30, 2020), p. 10-11.

<sup>11</sup> SDG&E Reply Comments on the Order Instituting Rulemaking (Dec. 14, 2020), p. 1-2; SCE Reply Comments on the Order Instituting Rulemaking (Dec. 14, 2020), p. 16-17.

Such clarification is critical because allowing additional procurement for new fossil fuel capacity is inconsistent with numerous important state mandates, policies, and rulings including Senate Bill (“SB”) 100,<sup>12</sup> California’s commitment to decarbonization, SB 32,<sup>13</sup> SB 350,<sup>14</sup> the Loading Order,<sup>15</sup> statutes that require analysis of other resources before procurement of carbon resources, and this Commission’s prior decision and planning.

For example, SB 100 requires an orderly transition away from carbon-powered electricity,<sup>16</sup> and Executive Order B-55-18 requires California to achieve carbon neutrality by 2045.<sup>17</sup> Expanding fossil fuel resources is inconsistent with these mandates and is likely to lead to stranded assets as California decarbonizes. Further, the Commission has a duty to ensure its decisions are just and reasonable,<sup>18</sup> and allowing the procurement of additional fossil-fueled capacity is not “just and reasonable” in light of SB 100 and the state’s focus on retiring fossil fuel facilities to meet greenhouse gas reduction mandates and policies.

Procurement of additional gas capacity is also inconsistent with the SB 350 requirement to minimize air emissions, with a priority for disadvantaged communities.<sup>19</sup> Given the burden that fossil fuel facilities impose on disadvantaged communities, the Commission required in D.19-04-040 that any LSE proposing new natural gas plants make additional showings that

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<sup>12</sup> California Renewables Portfolio Standard Program: emissions of greenhouse gases (De León, 2017-2018).

<sup>13</sup> California Global Warming Solutions Act of 2006: emissions limit (Pavley, 2015-2016).

<sup>14</sup> Clean Energy and Pollution Reduction Act of 2015 (De León, 2015-2016).

<sup>15</sup> D.14-03-004 explains that the Loading Order, developed as part of the state’s Energy Action Plan, prioritizes procurement of energy efficiency and demand response resources to meet energy demand, followed by renewable resources and distributed energy resources, and finally, fossil fuel generation. *See* D.14-03-004, n.3, pp. 6-7.

<sup>16</sup> California Renewables Portfolio Standard Program: emissions of greenhouse gases (De León, 2017-2018).

<sup>17</sup> Executive Order B-55-18 to Achieve Carbon Neutrality.

<sup>18</sup> Cal. Public Util. Code § 451.

<sup>19</sup> Cal. Pub. Util. Code 454.52(a)(1).

lower-emitting or zero-emitting resources could not meet the identified resource need.<sup>20</sup> The Commission imposed these requirements based on the following reasoning:

both because of the clear nexus between natural gas generation and emissions in disadvantaged communities within the electric sector and because a portfolio that includes new gas plant procurement would be inconsistent with the portfolio we are adopting in this decision..., we will require that any LSE proposing to develop new natural gas resources or re-contract with existing natural gas resources in their IRP for a term of five years or more, regardless of whether it is located in a disadvantaged community, make a showing as to why another lower-emitting or preferably zero-emitting resource could not reasonably meet the need identified.<sup>21</sup>

As the Commission has further stated, it is focused on minimizing the operation of fossil-fueled resources to the extent possible, especially in disadvantaged communities.<sup>22</sup>

The PD also errs because it conflicts with SB 350 requirements to optimize procurement of resources other than fossil-fueled generation for integration of renewables. Under Section 454.51(a), the Commission is required to “identify a diverse and balanced portfolio of resources needed to ensure a reliable electricity supply that provides optimal integration of renewable energy in a cost-effective manner.”<sup>23</sup> The Code further specifies that “[t]he portfolio shall rely upon zero carbon-emitting resources to the maximum extent reasonable and be designed to achieve” the GHG limit established by CARB.<sup>24</sup> In addition, Section 400 of the Code requires the Commission to “authorize procurement of resources to provide grid reliability services that *minimize* reliance on system power and fossil-fuel resources”<sup>25</sup> (emphasis added). And Section 380 requires that the Commission advance, to the extent possible, “the state’s goals for clean energy, reducing air pollution, and reducing greenhouse gas emissions.”<sup>26</sup> The current ambiguity in the PD, which IOUs are already interpreting to allow increased reliance on fossil-

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<sup>20</sup> D.18-02-018, p. 70.

<sup>21</sup> D.18-02-018, p. 70.

<sup>22</sup> D.18-02-018, p. 70.

<sup>23</sup> Cal. Public Util. Code § 454.51(a).

<sup>24</sup> Cal. Public Util. Code § 380.

<sup>25</sup> Cal. Public Util. Code § 400(c).

<sup>26</sup> Cal. Public Util. Code § 380.



fueled generation through, for example, retrofits of existing plants, is inconsistent with these laws because it does not explicitly require any IOU showings that efforts are being made to procure non-fossil fueled resources.

Finally, failing to exclude fossil-fueled generation from expedited procurement also conflicts with the Loading Order, which requires procurement of preferred resources *ahead* of those resources. As the Commission has found, “all utility procurement must be consistent with the Commission’s established Loading Order, or prioritization.”<sup>27</sup> For all the reasons described above, the Proposed Decision errs by failing to explicitly exclude new gas capacity from the direction regarding expedited procurement.

## **2. The Evidence Does Not Support the Expansion of Fossil-Fueled Resources.**

Correction of the PD’s failure to exclude fossil fuels is also warranted because the Commission’s own analyses and other record evidence do not find a need for expansion of fossil-fueled resources and instead support the conclusion that there is no need for such capacity. For example, in the Integrated Resource Planning (“IRP”) proceeding, neither the Commission’s Reference System Plan (“RSP”) nor the Preferred System Plan for 2030 found a need for new gas facilities.<sup>28</sup> As the Commission noted in relation to the RSP, “[i]n no scenario does the model pick new natural gas plants to be built in the future.”<sup>29</sup> These findings are critical and should be upheld here. As SDG&E stated, “[t]he Commission should not abandon its long-standing, deliberative resource planning processes” because “[d]oing so could create different but equally problematic reliability concerns, and could interfere with the policy objectives of the IRP and RA proceedings.”<sup>30</sup> Furthermore, the evidence shows that the primary cause of the

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<sup>27</sup> D.14-03-004, p. 14.

<sup>28</sup> See D.20-03-028, p. 41, Table 5, and p. 42, Table 6. The most recently adopted RPS retires 30 MW of existing natural gas generation and builds no new natural gas resources.

<sup>29</sup> D.18-02-018, p. 39.

<sup>30</sup> SDG&E Reply, p. 21.

August 2020 outages was an operational failure, not the lack of capacity. Specifically, analyses by CAISO’s Department of Monitoring and Marking describe how the August outages were caused primarily by a “software error” that resulted in almost 3,000 MW of exports not being available.<sup>31</sup> Procurement of new gas capacity would not fix this operational issue. As TURN’s expert witness aptly describes, “[e]ven under very extreme temperature conditions, which exceeded any reasonable planning standards, California might have escaped unscathed but for the [Residual Unit Commitment] RUC problem,” and, “[a]t minimum, this should temper the Commission’s zeal to take urgent actions in the near term that may prove highly costly to customers in the future—actions such as additional 10 year (or even worse, 20-year) procurement of gas-fired generation.”<sup>32</sup>

Even if the August event were due to lack of capacity, the record only shows a potential need for new capacity during at most one month. In its simplified stack analysis, CAISO only shows a need, if at all, in September 2021, not in the other months of the year.<sup>33</sup> SCE’s detailed loss of load expectation (“LOLE”) analysis found that the system will be reliable in 2021 if the anticipated procurement from the IRP proceeding occurs.<sup>34</sup> Thus, as TURN’s expert states, “any incremental procurement should be focused on the month of September, the only month in which existing and planned system resources that are available for the net peak hour, along with average imports, fail to meet the current 15% Planning Reserve Margin (PRM).”<sup>35</sup>

Given that need has only been found for one month of the year, it is not surprising that the Preliminary Root Cause Analysis only identified demand response as a potential new

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<sup>31</sup> See CAISO Department of Market Monitoring, Report on System and Market Conditions, Issues and Performances: August and September 2020, at pp. 68-69 (Nov. 24, 2020).

<sup>32</sup> TURN Reply Test., p. 4:11-15.

<sup>33</sup> CAISO Test. Billinton, p. 12.

<sup>34</sup> SCE Opening Comments on the Order Instituting Rulemaking (Nov. 30, 2020).

<sup>35</sup> TURN Reply Test, p. 17.

resource category: “[additional resource development]...will most likely focus on ‘demand side’ resources such as demand response.”<sup>36</sup> Moreover, it makes no sense to allow procurement of additional gas capacity when gas plants had a high forced outage rate during the August 2020 outages,<sup>37</sup> demonstrating that increasing gas plant capacity does not necessarily increase reliability.

These facts demonstrate the urgent need to correct the PD’s potential gas loophole. Procurement of new gas capacity is not needed, and investment—especially long-term investment—in gas plants is inconsistent with California’s clean energy transition and is not just or reasonable. The Commission should accordingly modify the PD to explicitly exclude fossil fuel procurement and focus on solutions that are consistent with state greenhouse gas, air quality, and disadvantaged community policies and requirements.

### **3. Commission Should Require IOUs to File Applications for Fossil Fuel Resource Procurement.**

We strongly urge the Commission to close the potential loophole for fossil fuel procurement described above. If the Commission elects not to modify the Proposed Decision to remedy this major error, it should at the very least require IOUs electing to procure incremental fossil fuel capacity to file an application, or at the very least, a Tier 3 advice letter. The Proposed Decision states that the IOUs should seek approval and CAM-based recovery through a Tier 1 advice letter by June 1, 2021 or even September 1, 2021.<sup>38</sup> If gas capacity is not excluded from the PD’s direction, this provision would erroneously allow IOUs to incur the financial, climate, environmental, and health costs of fossil generation that will be borne by ratepayers—disproportionately in disadvantaged communities—without responding to contrary evidence

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<sup>36</sup> Preliminary Root Cause Analysis, pp. 3-4.

<sup>37</sup> Preliminary Root Cause Analysis, p. 8 (the gas fleet experienced 1,400 to 2,000 MW of forced outages during the outages).

<sup>38</sup> Proposed Decision, p. 11.

presented by other parties. CEJA and Sierra Club have consistently objected to the use of anything less than an application if fossil fuel resources are proposed because their members and anyone else seeking to protest procurement will be prejudiced without such procedural protections.<sup>39</sup> Members of CEJA and the Sierra Club live throughout California and breathe some of the nation's most polluted air. Those members will be directly impacted if the Commission allows for procurement of fossil fuel resources because the emissions from fossil fuel plants directly impact the communities and residents that CEJA and the Sierra Club represent. Their procedural rights to protest any fossil fuel procurement should not be curtailed.

Further, a Tier 1 advice letter does not require Commission approval and could therefore allow fossil fuel procurement that conflicts with Commission precedent and statutory requirements. The Commission must not disregard the critical procedural protections necessary to ensure that its mandates are upheld. It is critical, when so much is at stake, that “the Commission has the option not to approve ...contracts for cost recovery.”<sup>40</sup>

Thus, if the Commission does not appropriately modify the Proposed Decision to close the potential loophole for new fossil fuel capacity procurement, the Commission should modify the PD to require IOUs that elect to procure additional fossil fuel capacity to submit applications, or at the very least, Tier 3 advice letters.

## **CONCLUSION**

For all the reasons above, the PD errs, and the Commission should modify it to clarify that (1) fossil-fueled power plants are not included in any expedited procurement authorization; and, if the Commission declines to make this critical clarification, (2) IOUs must submit an application, or at the very least, a Tier 3 Advice Letter for Commission approval of any fossil

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<sup>39</sup> See, e.g., CEJA, Sierra Club, Defenders of Wildlife and Public Advocates Office Petition for Modification of D.19-11-016 (Dec. 11, 2019), p. 14.

<sup>40</sup> D.20-03-028, pp. 82-83.

fuel procurement. In Appendix A, we include recommended revisions to the Findings of Fact, Conclusions of Law, and Order that are necessary to bring the Decision into compliance with California law and policy and with Commission precedent. We respectfully request that the Commission implement these changes and also modify the Decision to reflect their content.

Dated: January 28, 2021

Respectfully submitted,

/s/ Shana Lazerow

Shana Lazerow  
Connie Cho  
Communities for a Better Environment  
340 Marina Way  
Richmond, CA 94801  
Tel: (510) 302-0430  
Email: slazerow@cbeocal.org  
ccho@cbeocal.org

*Representing California Environmental Justice Alliance*

/s/ Nina Robertson

Nina Robertson  
Earthjustice  
50 California Street, Suite 500  
San Francisco, CA 94111  
Tel: (415) 217-2000  
Email: nrobertson@earthjustice.org

Katherine Ramsey  
Sierra Club  
2101 Webster Street, Suite 1300  
Oakland, CA 94612  
Tel: (415) 977-5627  
Email: katherine.ramsey@sierraclub.org

*Representing Sierra Club*

## APPENDIX A: SUGGESTED MODIFICATIONS TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

### Findings of Fact

5. There is may be a need for incremental ~~physical~~ demand response or storage resources that can address grid needs during the system peak and net peak demand periods for summer 2021 to prevent similar service interruptions to the August 2020 rotating outages.

6. Time is of the essence, and the Commission needs to expeditiously improve operations and contract for imports ~~signal support of contracts for expansion of existing resources that can help~~ maintain reliability in summer 2021 by delivering during peak and net peak demand periods.

7. In D.19-11-016, the Commission directed all LSEs serving load within the CAISO to procure 3,300 MW of incremental capacity at a minimum as a “least regrets” strategy and encouraged LSEs to exceed these minimum requirements to address what that decision referred to as “potential” system reliability challenges, ~~that are now actual system reliability challenges.~~

8. The potential need for the capacity identified impacts all customers in the service territories of the large electric IOUs.

10. The Commission may consider the approval of any expedited storage or demand response capacity procurement through advice letter submittals.

12. The following resource types may meet the emergency reliability capacity need for the summer of 2021: ~~incremental capacity from existing power plants through efficiency upgrades~~

~~including revised power purchase agreements~~; contracting for generation that is at-risk of retirement that will not result in stranded assets; incremental energy storage capacity; and resource adequacy only contracts or contracts that include tolling agreements.

## O R D E R

2. In contracting for capacity that is available to serve peak and net peak demand in the summer of 2021, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall adhere to the procurement parameters outlined in the Findings of Fact above and shall not~~outlined in section 5 of this Decision~~ contract for new incremental gas capacity.

3. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall ~~adhere to the guidance provided in section 6 of this Decision~~ to ensure that the Commission and interested parties may review and evaluate any contracts that are submitted to the Commission for consideration of approval.