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[1], UNION OF CONCERNED SCIENTISTS, AND SIERRA CLUB'S APPLICATION TO REHEAR AND CLARIFY DECISION 21-02-028

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Dated: March 11, 2021

[1] CEJA files this application on its own behalf and on behalf of its member organizations.

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Pursuant to Rule 16.1 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure and California Public Utilities Code Section 1731(b), Sierra Club, Union of Concerned Scientists, and the California Environmental Justice Alliance ("CEJA", on its own behalf and on behalf of its member organizations including but not limited to Communities for a Better Environment, Center for Community Action and Environmental Justice, Center on Race Poverty and the Environment, Central Coast Alliance United for a Sustainable Economy, and Leadership Counsel for Justice and Accountability) respectfully submit this application for rehearing of Decision ("D.") (hereinafter "Decision" or "D.21-02-028"). The Commission mailed the Decision on February 17, 2021; thus, this application for rehearing is timely filed.[2]

INTRODUCTION AND SUMMARY

Section 1757 of the California Public Utilities Code[3] provides that the Commission must proceed in the manner required by law, pursuant to its jurisdiction, and support its conclusions with findings and substantial evidence. [4] The Decision violates these requirements because: (1)

[2] See California Public Utilities Commssion Rules of Practice and Procedure ("Rule") 16.1(a).
[3] Unless otherwise stated, all further section references are to the California Public Utilities Code.
[4] Cal. Pub. Util. Code § 1757.

the Commission acted in excess of its powers; (2) the Decision is not supported by the findings; (3) the Decision is not supported by substantial evidence; and (4) the Commission's order violates CEJA's and Sierra Club's procedural rights. The Commission's Rules of Practice and Procedure require the filing of an application of rehearing "to alert the Commission to legal error, so that the Commission may correct it expeditiously."[5] Section 1756 of the Code further requires parties to allow the Commission time to respond to an application for rehearing before the party may petition for a writ of review.[6] Accordingly, by application, Sierra Club, UCS, and CEJA on its own behalf and on behalf of each of its member organizations, alerts the Commission to these significant errs in its decision.

Specifically, the Decision commits three distinct legal errors. First, it errs by authorizing procurement without a need determination and without findings supported by substantial evidence. Second, the Decision errs by allowing the procurement of fossil fuel resources. Such direction is inconsistent with Commission precedent and statutory requirements regarding air quality, disadvantaged communities, and climate goals. It also contradicts and severely undermines the Commission's precedent and statutory mandates, and thus constitutes legal error. Third, the Decision errs by directing investor-owned utilities ("IOUs") to procure resources after filing only a Tier 1 advice letter, a procedure which lacks even Commisison review and deprives parties of the ability to protest proposed fossil fuel procurement in evidentiary hearings. The Decision's Tier 1 advice letter process violates the Commission's own rules and thus constitutes legal error.

These legal errors have real, tangible impacts for the communities impacted by fossil-fueled generation. As explained in Sierra Club's testimony, fossil-fueled generation produces

[5] See Rule 16(c).
[6] Cal. Public Util. Code § 1756(a).

pollution that impacts public health, contributes to the climate crisis, and directly harms human health.[7] Fine particulate matter, for example, is closely connected to decreased lung function, more frequent emergency department visits, additional hospitalization, and increased morbidity.[8] Any additional pollution is a major 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.[9] Gas plants exacerbate environmental and health harms in California's most polluted air basins.[10] There are "unique risks that increased gas plant emissions pose to disadvantaged communities, particularly during the COVID-19 pandemic."[11] Notably, roughly half of California's gas plants are located in the most disadvantaged communities.[12] The Decision risks further exacerbating these unjust harms on the state's most vulnerable populations.

By providing direction that flies in the face of California law and Commission precedent, D.21-02-028 commits legal error, and the Commission must grant this application to rehear the Decision. We detail these points further below.

DISCUSSION

Pursuant to Section 1757 of the Code, the Commission must act within its powers or jurisdiction and proceed in a manner required by law.[13] When subjected to judicial scrutiny, a court will review whether the Commission's decision is supported by the findings and whether

[7] Sierra Club Opening Test., p. 3.
[8] Sierra Club Opening Test., p. 4. (citing American Lung Association, *Particle Pollution, available at* https://www.lung.org/cleanair/outdoors/what-makes-air-unhealthy/particle-pollution).
[9] Sierra Club Opening Test., p. 7. (citing U.S. EPA, *Green Book: Current Nonattainment Counties for All Criteria Pollutants available at* https://www3.epa.gov/airquality/greenbook/ancl.html.
[10] Sierra Club Opening Test., p. 7-10 (citing sources).
[11] Sierra Club Opening Test., p. 2.
[12] Sierra Club Opening Test., p. 9 (citing PSE Healthy Energy, *California Peaker Power Plants: Energy Storage Replacement Opportunities*, at 1 (May 2020), *available at* https://www.psehealthyenergy.org/wpcontent/uploads/2020/05/California.pdf.
[13] Cal. Public Util. Code § 1757.

the findings are supported by substantial evidence in light of the whole record.[14] To determine if the findings are supported by substantial evidence, the court must consider all relevant evidence, including evidence detracting from the decision, a task which involves some weighing to fairly estimate the worth of the evidence."[15] For the reasons described below, the Decision fails to meet these legal requirements.

1. The Decision Erroneously Orders Procurement Without a Need Determination Based on Record Evidence.

The Decision's findings and substantial evidence do not support the Decision's procurement direction. Under controlling law, the Commission cannot order procurement unless it finds a need for additional resources supported by substantial evidence.[16] Without such a finding of need—or even an upper and lower bound of a potential need—the Decision does not pass legal muster. Commission decisions must proceed in the manner required by law, and each decision must be supported by substantial evidence in light of the whole record.[17] In this Decision, the Commission fails to meet this standard by failing to even quantify the need.

An agency's decision must consist of at least "a residuum of legally admissible evidence."[18] Hearsay evidence can supplement or explain other evidence, but inadmissible hearsay evidence alone is not sufficient to support a Commission decision.[19] In this instance, the Decision vaguely asserts that there is a "practical need for action,"[20] but it provides no evidence, much less substantial evidence, to support the need for new procurement. Parties presented

[14] Cal. Public Util. Code § 1757.
[15] *Lucas Valley Homeowners Assn. v. County of Marin* (1991) 233 Cal.App.3d 130, 141–142.
[16] *See The Utility Reform Network v. Pub. Util. Comm'n*, 223 Cal.App.4th 945 (2014) (rejecting a Commission decision approving a power purchase agreement for lack of substantial evidence in support of the decision).
[17] Cal. Pub. Util. Code § 1757(a)(4).
[18] 1 Witkin, Cal. Evidence, *supra,* § 60, p. 72.
[19] Cal. Gov't Code § 11513, subd. (d).
[20] Decision 21-02-028 ("Decision"), p. 9.

vastly different opinions about the cause of the August 2020 outages, and the two sources cited in the Decision's findings of fact[21]—D.19-11-016, the prior procurement decision from the Integrated Resource Planning ("IRP") proceeding, and the *Preliminary Root Cause Analysis, Mid-August 2020 Heat Storm,* ("*Preliminary Root Cause Analysis*")[22]—provide no support for the proposition that need exists or that any new procurement is warranted.

First, in D.19-11-016, the Commission found a potential need for 3,300 MW, and as "insurance," it delayed the retirement of approximately 2,300 MW of once-through cooling ("OTC") plants.[23] A subsequent decision in the Integrated Resrouces Planning Proceeding, D.20-12-044, also provided a mechanism for backstop procurement to ensure the procurement mandate was met.[24] Here, the Decision has provided no facts to support a finding that any of the D.19-11-016 procurement has failed or that more "insurance" beyond the polluting OTC units is needed. The Decision likewise fails to provide any evidence that the D.20-12-044 backstop provisions are somehow flawed such that the Commission must now direct additional procurement.

Second, the Decision's reliance on the *Preliminary Root Cause Analysis* is also misplaced. The *Preliminary Root Cause Analysis* is hearsay evidence, which under controlling precedent, cannot, in itself, establish a need for procurement. In *The Utility Reform Network v. Public Utilities Commission,* (aka "the Oakley Decision"), the California Court of Appeal for the First District roundly rebuffed the Commission's approval of a power purchase agreement for

[21] Decision Findings of Fact 3-4, 7.
[22] The Decision also points to CAISO and other party comments in support of procurement, but none of these comments are evidence showing a need; rather they simply show party support for procurement, regardless of need. Decision, p. 9.
[23] D.19-11-016, pp. 20, 34.
[24] *See* D.19-11-016, D.20-12-044.

new generation in Oakley, CA when it relied on hearsay evidence. [25] In support of its erroneous Oakley decision, the Commission had cited a waiver petition, a statement by CAISO's officer, a prior district court decision, a CEC final permit decision, and testimony of an IOU witness.[26] The Court of Appeal determined that the testimony failed to support a substantial evidence finding because testimony about whether a project "can contribute to meeting a possible need does not support the claim that the need itself exists."[27] As related to the evidence from CAISO, the court explained that although the Commission can rely on it, hearsay evidence "does not necessarily confer the status of 'sufficiency' to support a finding absent other competent evidence."[28] Ultimately, the court found that "[b]ecause the Commission's finding is based upon uncorroborated hearsay evidence, and the truth of the CAISO's extrarecord statements is disputed, the finding cannot be sustained."[29] Here, the Decision suffers from similar deficiencies because it relies almost entirely on disputed, uncorroborated hearsay evidence to identify a general, unquantified need. As TURN correctly states, "the 'evidence' is not incontrovertible, and the Commission cannot rely on its own 'report' to claim that there is substantial evidence when the facts in that report are disputed."[30] Furthermore, even if the *Preliminary Root Cause Analysis* were entitled to some weight despite the fact that it is hearsay, it still fails to support the Decision because it does not specify or even approximate system need.[31]

[25] *The Utility Reform Network v. Pub. Util. Comm'n*, 223 Cal.App.4th 945 (2014).
[26] *Id*. at 963-965.
[27] *Id*. at 965.
[28] *Id*. at 960-961 (citations omitted).
[29] *Id*. at 966.
[30] TURN Comments on Proposed Decision, p. 1.
[31] In addition, the analysis was largely supplanted by the joint agencies' January 13, 2021 *Final Root Cause Analysis*, and this final report amends the preliminary report. *Available at* http://www.caiso.com/Documents/Final-Root-Cause-Analysis-Mid-August-2020-Extreme-Heat-Wave.pdf.

Third, the evidence shows that the primary cause of the 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 for in-state use.[32] Procurement of new gas capacity would not fix this operational issue. And even if the August 2020 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.[33] SCE's more 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.[34] Given that need was only found for one month of the year, the *Preliminary Root Cause Analysis* only identified demand response as a potential new resource category: "[additional resource development]…will most likely focus on 'demand side' resources such as demand response."[35] Further, gas plants had a high forced outage rate during the August 2020 outages,[36] demonstrating that increasing gas plant capacity does not necessarily increase reliability. Thus, without a proper need determination that is based on substantial evidence in the record, the Decision's authorization of additional fossil fuel generating capacity is in error.

[32] *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).
[33] CAISO Test. (Billinton), p. 12.
[34] SCE Opening Comments on the Order Instituting Rulemaking (Nov. 30, 2020).
[35] CAISO, California Public Utilities Commission, Californa Energy Commission, Preliminary Root Cause Analysis, Mid-August 2020 Heat Storm (Oct. 6, 2020) ("Preliminary Root Cause Analysis"), pp. 3-4.
[36] Preliminary Root Cause Analysis, p. 8 (the gas fleet experienced 1,400 to 2,000 MW of forced outages during the outages).

2. The Decision Erroneously Includes Ambiguous Direction That Does Not Clearly Exclude New Fossil-Fueled Generation Capacity, and Any New, Polluting, Fossil-Fueled Resources Conflict with State Law and Policy.

The Decision commits legal error because it creates a loophole for new investments in fossil fuel infrastructure, in conflict with California's climate goals and air quality requirements. The Decision creates this loophole without any evidence for the backtrack from Commission precedent and California's requirements. The Decision specifies that resource types for procurement may include "[i]ncremental capacity from existing power plants through efficiency upgrades, revised power purchase agreements, etc…."[37]

Under these terms, the only potentially new incremental gas capacity the Decision allows must be from "efficiency upgrades." The Decision errs by failing to define or circumscribe the scope of "efficiency" projects. "Efficiency" by its definition simply means using less energy to perform the same task[38]—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.

Indeed, this conflict is evident in the advice letters filed by the IOUs pursuant to D.21-02-028. In those letters, the IOUs have improperly announced their intention to procure additional "incremental" fossil fuel capacity through "efficiency upgrades." Specifically, PG&E proposes to procure "incremental" energy by entering into bilateral contracts with, among others, eight cogeneration plants and to add "incremental capacity" from a gas plant and a cogeneration plant.[39] SCE proposes to contract for "incremental capacity" with three gas plants, two of which

[37] Decision, p. 11.
[38] 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.
[39] PG&E Advice Letter 6088-E, p. 6.

(El Segundo Energy Center and Walnut Creek Energy Park) are located in disadvantaged communities.[40] According to SCE, the incremental capacity will come from "efficiency upgrades."[41] Similarly, SDG&E proposes "incremental capacity" through "efficiency upgrades" to Sentinel Energy Center,[42] a gas-fired power plant in an area that the U.S. Environmental Protection Agency has designated in extreme nonattainment for ozone and serious nonattainment for coarse particulate matter.[43] CEJA, UCS, and Sierra Club have filed detailed protests to each advice letter, explaining why the Commission cannot legally not approve the proposed procurement of these pollutings resources.[44]

Problematically, the Decision creates this loophole without any record evidence that more fossil fuel capacity is needed. There has not been a specific showing that more fossil fuel capacity is needed. Indeed, the only party that showed *any* need in the entire proceeding was CAISO, and that need was only for September 2021.[45] This does not support overturning Commission precedent and statutory requirements to allow a significant loophole for fossil fuel procurement. Rather, if anything, this arguably supports more demand-side resources and not imports. The Decision thus failed to examine substantial, or really any, evidence of whether a need for fossil fuel procurement exists.

[40] SCE Advice Letter 4415-E, p. 14.
[41] SCE Advice Letter 4415-E, p. 14.
[42] SDG&E Advice Letter 3689-E, p. 4.
[43] EPA Greenbook, https://www3.epa.gov/airquality/greenbook/anayo_ca.html (last visited March 10, 2021).
[44] California Environmental Justice Alliance, Union of Concerned Scientists and Sierra Club Protest of Southern California Electric Company's Advice Letter 4415-E (Feb. 26, 2021); California Environmental Justice Alliance, Union of Concerned Scientists and Sierra Club Protest of Pacific Gas & Electric Company's Advice Letter 6088-E (Feb. 26, 2021); California Environmental Justice Alliance, Union of Concerned Scientists and Sierra Club Protest of San Diego Gas & Eletrict Advice Letter 3689-E (Feb. 26, 2021).
[45] CAISO Test. (Billinton), p. 12.

In addition, as the CEJA, UCS and Sierra Club discuss in protests and comments,[46] allowing additional procurement of new fossil fuel capacity is inconsistent with numerous important state mandates, policies, and rulings including Senate Bill ("SB") 100,[47] California's commitment to decarbonization, SB 32,[48] SB 350,[49] the Loading Order,[50] 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,[51] and Executive Order B-55-18 requires California to achieve carbon neutrality by 2045.[52] Expanding fossil fuel resources is inconsistent with these mandates and is likely to lead to stranded assets as California decarbonizes. Moreover, the Commission has a duty to ensure its decisions are just and reasonable,[53] 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 case 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.[54] Given the burden that fossil fuel facilities impose on disadvantaged communities, the Commission required in

[46] See, e.g., *supra* at 44; CEJA and Sierra Club Opening Comments on Proposed Decision (Jan. 28, 2021); UCS Opening Comments on Proposed Decision (Jan. 28, 2021).
[47] California Renewables Portfolio Standard Program: emissions of greenhouse gases (De León, 2017-2018).
[48] California Global Warming Solutions Act of 2006: emissions limit (Pavley, 2015-2016).
[49] Clean Energy and Pollution Reduction Act of 2015 (De León, 2015-2016).
[50] 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.
[51] California Renewables Portfolio Standard Program: emissions of greenhouse gases (De León, 2017-2018).
[52] Executive Order B-55-18 to Achieve Carbon Neutrality.
[53] Cal. Public Util. Code § 451.
[54] Cal. Pub. Util. Code § 454.52(a)(1).

D.19-04-040 that any LSE proposing new natural gas plants make additional showings that lower-emitting or zero-emitting resources could not meet the identified resource need.[55] 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.[56]

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.[57] Such minimization is critical because numerous studies have shown that gas-fired power plants directly harm human health and drive the climate crisis that causes extreme weather events.[58] A recent study found that air pollution is even deadlier than previous research suggested, and initial studies linking air pollution and COVID-19 mortality reinforce the importance of reducing air pollution in disadvantaged communities.[59]

The Decision 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."[60] The Code further specifies that

[55] D.18-02-018, p. 70.
[56] D.18-02-018, p. 70.
[57] D.18-02-018, p. 70.
[58] *See* Sierra Club Opening Test., p. 3.
[59] *See* CEJA Opening Test. (Sakaguchi), p. 3-6.
[60] Cal. Public Util. Code § 454.51(a).

"[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.[61] 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."[62] 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."[63] The Code also requires IOUs to "give preference to renewable energy projects that provide environmental and economic benefits" to environmental justice communities and not actively seek new gas generation in communities suffering from a high cumulative pollution burden.[64] Also, the Commission's 2019 Environmental and Social Justice Action Plan requires the Commission to reduce reliance on gas resources and prioritize clean energy resources for environmental justice communities.[65] The Decision directly contradicts these renewable, climate, and justice mandates. These commitments must be upheld in all Commission actions, and this Decision fails to include any explanation or justification for neglecting them here.

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."[66]

For all the reasons described above, the Decision errs by failing to explicitly exclude new

[61] Cal. Public Util. Code § 380.
[62] Cal. Public Util. Code § 400(c) (emphasis added).
[63] Cal. Public Util. Code § 380.
[64] Pub. Util. Code § 399.13(a)(7); Pub. Util. Code § 454.5(b)(9)(D).
[65] CPUC, Environmental and Social Justice Action Plan, (Feb. 21, 2019), https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/UtilitiesIndustries/Energy/EnergyPrograms/Infrastructure/DC/Env%20and%20Social%20Justice%20ActionPlan_%202019-02-21.docx.pdf.
[66] D.14-03-004, p. 14.

gas capacity from the direction regarding expedited procurement.

3. Use of a Tier 1 Advice Letter for Procurement Is in Error, and CEJA and Sierra Club Will Be Prejudiced if This Application for Rehearing Is not Granted Because They Have No Opportunity to Protest Fossil Fuel Procurement in an Evidentiary Hearing.

The Decision erroneously allows IOUs to seek approval and CAM-based recovery through a Tier 1 advice letter.[67] This provision, coupled with the ambiguous direction regarding potential new fossil fuel capacity described above, allows 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 presented by other parties. Such an abbreviated procedure cannot stand because it constitutes legal error.

First, the use of a Tier 1 advice letter for any new fossil fuel capacity constitutes legal error because it is inconsistent with Commission rules. General Order 96-B sets forth advice letter tiers, and only relegates to Tier 1 matters that follow the exact word of a decision and do not deviate from a decision or requirement.[68] A contract for procurement cannot meet this requirement as it will depend on the exact facts of the contract. What is more, the Commission cannot lawfully delegate discretionary procurement review to staff. [69]

Second, the use of a Tier 1 advice letter for such procurement improperly prejudices parties impacted by the procurement who seek to object. CEJA and Sierra Club have consistently challenged the use of anything less than an application if fossil fuel resources are

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[67] Decision, p. 11.
[68] *See* CPUC, General Order 96-B, Energy Industry Rule 5.1, *available at* https://www.cpuc.ca.gov/General.aspx?id=6442461367 (last accessed Feb. 2, 2021).
[69] *See* D.06-06-069, pp. 10-11 (citing Bagley v. City of Manhattan Beach (1976) 18 Cal.3d 22, 24; California School Employees Association v. Personnel Commission (1970) 3 Cal.3d 139, 144; Schecter v. County of Los Angeles (1968) 258 Cal.App.2d 391, 396.)). *See also* D.02-02-049, p. 5 (citing California School Employees Association v. Personnel Commission (1970) 3 Cal.3d 139).

proposed because their members and anyone else seeking to protest procurement will be prejudiced without such procedural protections.[70] Members of CEJA, UCS, 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, UCS, and the Sierra Club represent. Their procedural rights to protest any fossil fuel procurement should not be curtailed. 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."[71]

Thus, the Decision's procedure for procurement is in error, and Commission must rehear the Decision and require IOUs that elect to procure additional fossil fuel capacity to submit applications, or at the very least, Tier 3 advice letters.

CONCLUSION

For the reasons above, the Decision is inconsistent with legal mandates and Commission precedent and unsupported by evidence. The Commission must accordingly grant this application for rehearing and correct the Decision's legal errors by clarifying that: (1) fossil-fueled power plants are not included in any expedited procurement authorization; and, (2) IOUs must submit an application, or at the very least, a Tier 3 Advice Letter for Commission approval of any fossil fuel procurement.

Dated: March 11, 2021

Respectfully submitted,

/s/ Nina Robertson
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Earthjustice

[70] 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.
[71] D.20-03-028, pp. 82-83.

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