

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)

**RESPONSE OF
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES
TO THE CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE, UNION OF
CONCERNED SCIENTISTS, AND SIERRA CLUB APPLICATION TO REHEAR AND
CLARIFY DECISION 21-02-028 AND THE PROTECT OUR COMMUNITIES
FOUNDATION APPLICATION FOR REHEARING OF D.21-02-028**

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For: CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES

April 5, 2021

BEFORE THE PUBLIC UTILITIES COMMISSION
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Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submit this Response to the California Environmental Justice Alliance, Union of Concerned Scientists, and Sierra Club’s Application to Rehear and Clarify Decision 21-02-028 (the Joint Parties’ Application for Rehearing), submitted on March 11, 2021 and the Protect Our Communities Foundation Application for Rehearing of D.21-02-028, submitted on March 19, 2021 (PCF’s Application for Rehearing). Both Applications for Rehearing were submitted in Rulemaking (R.) 20-11-003 (Extreme Weather). This Response is timely filed and served pursuant to Rule 16.1(d) of the Commission’s Rules of Practice and Procedure.¹

**I.
INTRODUCTION**

On February 17, 2021, the Commission issued D.21-02-028 which is the Decision Directing Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company to Seek Contracts for Additional Power Capacity for Summer 2021 Reliability (D.21-02-028). D.21-02-028 orders Pacific Gas and Electric Company,

¹ Rule 16.1(d) provides that “[i]n instances of multiple applications for rehearing the response may be to all such applications, and may be filed 15 days after the last application for rehearing was filed.

Southern California Edison Company, and San Diego Gas & Electric Company (collectively, the investor-owned utilities (IOUs)) to “contract for capacity that is available to serve peak and net peak demand in the summer of 2021 and seek approval for cost recovery in rates.”² D.21-02-028 further states that resource types that may be considered for procurement under this decision include “incremental capacity from existing power plants through efficiency upgrades including revised power purchase agreements,” and “contracting for generation that is at-risk of retirement[.]”³

As discussed above, the Joint Parties and PCF both timely filed Applications for Rehearing of D.21-02-028. CEERT is in full accord with the Joint Parties and PCF and urges the Commission to quickly grant the relief requested. Specifically, CEERT supports PCF’s contention that D.21-02-028 be vacated, in part, because the “Commission lacked jurisdiction to order fossil-fuel procurement outside its statutorily-required proceedings ...”⁴ In the alternative, and at a minimum, CEERT supports the Joint Parties’ request that D.21-02-028 be corrected to clarify that: “(1) fossil-fueled power plants are not included in any expedited procurement authorization, and (2) [the investor-owned utilities (IOUs)] must submit an application, or at the very least, a Tier 3 Advice Letter for Commission approval of any fossil fuel procurement.”⁵ In granting these Applications for Rehearing, the Commission should correct D.21-02-028 so that it does not result in unnecessary, long-term natural gas capacity and instead shift the focus to procurement of clean energy resources.

² D.21-02-028, at p. 18, Ordering Paragraph 1.

³ *Id.*, at p. 16, Finding of Fact 12.

⁴ PCF’s Application for Rehearing, at p. 2.

⁵ The Joint Parties’ Application for Rehearing, at p. 14.

II. THE COMMISSION MUST ADDRESS THE ISSUES RAISED IN THE APPLICATIONS FOR REHEARING GIVEN THE CLEAR LEGAL ARGUMENTS AND POTENTIAL ENVIRONMENTAL IMPACTS

The Joint Parties and PCF lay out a clear and compelling set of legal and policy arguments detailing how the Commission committed legal error in issuing D.21-02-028.⁶ To begin with, both the Joint Parties and PCF correctly state that the decision erroneously ordered procurement with a need determination based on record evidence.⁷ CEERT agrees with the Joint Parties that the decision “provides no evidence, much less substantial evidence, to support the need for new procurement.”⁸

However, CEERT’S primary concern with D.21-02-028 is its treatment of gas generation. In its Opening Comments on the Proposed Decision Directing Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company to Seek Contracts for Additional Power Capacity for Summer 2021 Reliability (Proposed Decision), CEERT urged the Commission to avoid “further investment into or procurement of additional gas fired generation[.]” and instead explore procurement of clean energy resources.⁹ As such, CEERT agrees with the Joint Parties and PCF who raise concerns about the Decision’s reliance on fossil fuels.¹⁰ The Joint Parties correctly argue that D.21-02-028 “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.”¹¹ Similarly, CEERT concurs with PCF that “rather than taking action to reduce the use of fossil fuels that cause climate change and

⁶ The Joint Parties’ Application for Rehearing, at pp. 3-14 and PCF’s Application for Rehearing, at pp. 12-19.

⁷ The Joint Parties’ Application for Rehearing, at p. 4 and PCF’s Application for Rehearing, at p. 8.

⁸ PCF’s Application for Rehearing, at p. 4.

⁹ CEERT’s Opening Comments on the Proposed Decision, at pp. 3 and 6.

¹⁰ The Joint Parties’ Application for Rehearing, at pp. 8-13 and PCF’s Application for Rehearing, at pp. 13-14.

¹¹ The Joint Parties’ Application for Rehearing, at p. 8.

worsen climate change impacts, the subject Decision purports to react to climate change effects by *increasing* the use of fossil-fueled resources.”¹²

As discussed by both the Joint Parties and PCF, D.21-02-028’s allowance of additional procurement of new fossil fuel capacity is inconsistent with numerous important state mandates.¹³ CEERT agrees with the Joint Parties that 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.”¹⁴ CEERT supports the contention by PCF that the Decision violates due process because the Commission “prevented any meaningful opportunity to disprove the erroneous assumptions in the Decision in violation of fundamental principles of due process.”¹⁵ Lastly, CEERT agrees with the Joint Parties that “the use of a Tier 1 advice letter for any new fossil fuel capacity constitutes legal error because it is inconsistent with Commission rules[]” and instead, the Commission should “require IOUs that elect to procure additional fossil fuel capacity to submit applications, or at the very least, Tier 3 advice letters.”¹⁶

III. CONCLUSION

CEERT appreciates the opportunity to provide a Response to the Joint Parties’ and PCF’s Applications for Rehearing of D.21-02-028.

¹² PCF’s Application for Rehearing, at p. 13.

¹³ The Joint Parties’ Application for Rehearing, at p. 10 and PCF’s Application for Rehearing, at pp. 13-14.

¹⁴ The Joint Parties’ Application for Rehearing, at p. 12.

¹⁵ PCF’s Application for Rehearing, at p. 18.

¹⁶ The Joint Parties’ Application for Rehearing, at p. 13-14.

April 5, 2021

Respectfully submitted,

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