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

Order Instituting Rulemaking to  
Continue Electric Integrated Resource  
Planning and Related Procurement  
Processes.

Rulemaking 20-05-003

**ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENTS  
ON STAFF PAPER ON PROCUREMENT PROGRAM  
AND POTENTIAL NEAR-TERM ACTIONS  
TO ENCOURAGE ADDITIONAL PROCUREMENT**

**Summary**

This ruling invites comments on a staff paper titled "Reliable and Clean Power Procurement Program: Staff Options Paper" and included in this ruling as Attachment A. Parties are invited to comment on Attachment A and the questions in Section 1 of this ruling by no later than November 7, 2022. Reply comments are due no later than November 28, 2022.

This ruling also invites comments on near-term actions the Commission could take to encourage immediate additional electricity procurement between now and 2026 or beyond, and to ensure that the requirements of Decision (D.) 19-11-016 and D.21-06-035 are met. Those options are discussed in Section 2 of this ruling. Comments in response to Section 2 are invited from parties by no later than September 26, 2022. Reply comments on this topic are due no later than October 6, 2022.

## **1. Staff Paper on Programmatic Approaches to Electricity Procurement**

D.22-02-004<sup>1</sup> committed this proceeding to the exploration of options for a programmatic approach to electricity procurement to meet the goals of the planning track of the integrated resources planning (IRP) process. The purpose of the programmatic approach is to ensure the success of the IRP process at delivering both electric sector reliability and greenhouse gas (GHG) reduction outcomes, in keeping with state policy. Ideally, an adopted programmatic approach to procurement would obviate the need for individual orders like D.19-11-016 and D.21-06-035, and replace them with an ongoing obligation for each load-serving entity (LSE) to procure enough resources to meet its share of reliability and GHG-reduction requirements. The program would also aim to make clear how the IRP planning track processes flow directly into procurement obligations and actions on the part of each LSE.

The Staff Options Paper included in Attachment A describes various ways LSEs could be required to procure resources necessary to meet their share of total system reliability and clean energy needs over the medium to long term. The paper also describes potential compliance and enforcement approaches. The paper does not provide specific recommendations regarding program design. Instead, it seeks to articulate the possible options that could be chosen when developing the program, and seeks party comments on them. It is important to note that many of the options are not totally new and may have been considered by the Commission in other contexts, such as resource adequacy.

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<sup>1</sup> See D.22-02-044, specifically Section 7.3.

An appendix to the paper, Section 10.3, also articulates interim procurement options, should design and implementation of the overall program take longer than anticipated.

To facilitate understanding and discussion of the staff options paper, a virtual workshop in this proceeding will be held in September 2022. Commission staff will provide notice of the workshop, with details on how to join, to the service lists for this proceeding, as well as the resource adequacy and renewables portfolio standard proceedings.

Feedback from parties will help Commission staff develop and recommend a more specific program design in early 2023.

### **1.1. Questions for Parties**

This section of the ruling includes specific questions to which parties are requested to respond in commenting on the staff paper in Attachment A. If parties wish to make other comments unrelated to these questions, they are asked to add those comments at the end, after responding to the specific questions.

Comments on the questions in this section are due to be filed and served by no later than November 7, 2022. Reply comments should be filed and served no later than November 28, 2022. Parties should respond to the following questions:

1. Objectives
  - a. Do the stated objectives of the new procurement program in Attachment A appropriately capture the Commission's direction given in D.22-02-004? If not, provide additions and/or alternatives.
  - b. How should the program's objectives be prioritized?
  - c. Do you agree with how the four factors motivating the need for a procurement program (reliability,

environment, financial risk, and market power) are described in the Appendix and Section 7 of Attachment A? If not, provide alternative viewpoints with supporting rationale.

- d. Do you agree that a new procurement program is needed? If not, explain why.
  - e. Should the program be designed to drive resource attribute-focused procurement by all LSEs, or should it also be able to deliver some form of centralized, resource-specific procurement (*e.g.*, large-scale and/or long lead-time resources)? Explain your reasoning.
2. The “fundamental program elements” and “additional design features” introduced in Section 4 of Attachment A build on concepts detailed in the November 2020 Staff Proposal for a Procurement Framework in IRP.<sup>2</sup> Comment on their general suitability for discussing potential procurement program designs.
  3. Comment on any content in the November 2020 Staff Proposal for a Procurement Framework in IRP that you think is particularly relevant to developing a programmatic approach to procurement now, especially if it was not included in Attachment A.
  4. Comment on each of the fundamental program elements and features described in Section 5 of Attachment A on Designing for Reliability. Is the range of options for each design element or feature appropriate? Explain your rationale.
    - a. Need Determination;
    - b. Need Allocation;
    - c. Compliance; and
    - d. Enforcement.

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<sup>2</sup> Available at the following link:

<https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M351/K577/351577337.PDF>.

5. Comment on each of the fundamental program elements and features described in Section 6 of Attachment A on Designing for GHG-Reduction. Is the range of options for each design element appropriate? Explain your rationale.
  - a. Need Determination;
  - b. Need Allocation;
  - c. Compliance; and
  - d. Enforcement.
6. Comment on the other program design considerations raised in Section 7 of Attachment A. Should they affect the design of the program and, if so, how?
  - a. Financial risk and risk of LSE market exit;
  - b. Risk of market power; and
  - c. Past and centralized procurement.
7. Assess the straw options in Section 8 of Attachment A. Include in your comments an assessment of the options against the program's objectives listed in Section 3 of Attachment A.
8. Do you recommend adopting any of the options as presented in Attachment A? Explain your reasoning and justify your recommendation, by including assessment of your preferred approach against the program's objectives listed in Section 3 of Attachment A. If you do not recommend any of the option in Attachment A, indicate whether you recommend:
  - a. A hybrid of elements described;
  - b. A hybrid of some elements described and some not described; or
  - c. An entirely different approach than the options described.
9. Should the new program's compliance showings should be combined with the current annual compliance reports required by the renewables portfolio standard program, filing of LSEs' individual IRPs, and/or other existing

- regular planning and procurement filings? Do you have any other suggestions to minimize the time and effort required of LSEs and staff?
10. Local reliability is raised briefly in Section 5.1.1 of Attachment A. Requirements are currently set for the near-term as part of the resource adequacy program. Are these sufficient, or should there be medium-to-long-term procurement requirements as well? If so, should they be part of the new program or should they be addressed on an order-by-order basis in parallel with the program? Explain your reasoning.
  11. How would the approaches described in Section 5.1.1 of Attachment A need to be amended or expanded in order to minimize local air pollutants and other GHG emissions in disadvantaged communities associated with location-specific procurement?
  12. D.22-02-004 ordered two storage projects be procured to mitigate the need for transmission upgrades and noted that the new procurement program may be able to address opportunities of this nature. Do you think that is appropriate? If so, explain why, and how the program design should consider this.
  13. Comment on the need to develop interim approaches to manage the risk of the preferred program design taking longer to implement.
  14. Assess the interim options discussion in Appendix 10.3 of Attachment A. Include in your comments an assessment of the options against the program's objectives listed in Section 3 of Attachment A.
  15. Do you recommend adopting either of the interim options in Appendix 10.3 of Attachment A? If not, what do you recommend? Explain your rationale.

## **2. Potential Near-Term Options to Encourage Procurement**

While this proceeding is considering options for a long-term and durable framework for procurement associated with IRP, there is already a great deal of procurement underway in response to both D.19-11-016 and D.21-06-035 requirements, as well as “summer reliability” procurement directed through other proceedings. D.19-11-016 required 3,300 megawatts (MW) of net qualifying capacity in incremental procurement beyond a baseline determined at that time, and D.21-06-035 required an addition 11,500 MW beyond an updated baseline.

Since those two procurement decisions were issued, several circumstances have changed in the electric sector in California. Those changes include, but likely are not limited to, the following factors that contributed to recent higher California Energy Commission (CEC) demand forecasts as well as the need for more procurement:

- Increasing frequency of extreme weather conditions, including heat leading to increased electricity demand and drought leading to decreased availability of hydroelectric generating capacity;
- Increasing electricity demand overall, beyond levels forecasted by the CEC in previous annual demand forecasts. This is likely due to a combination of factors including weather, increasing penetration of electric vehicles, increasing penetration of air conditioning, electrification of buildings, and changing consumption patterns during and after the COVID-19 pandemic;
- Decreasing availability of imported electricity, due to the above factors impacting other states in the West, especially the Northwest, on which California traditionally relies for seasonal imports;
- Less electric capacity availability in the market, due to aging and retirement of some older generating units; and

- Accelerating goals for clean energy production and reductions in GHG emissions through 2045 and earlier.

In addition, there have been several recent changes to the regulatory and statutory landscape that impact procurement activities, including the following:

- Changing the resource adequacy obligations of the LSEs (*see* D.22-06-050);
- The introduction of a state strategic reliability reserve (*see* Assembly Bill (AB) 205 (Stats. 2022, Ch. 61));
- Allowing for an extension of the timeline for the retirement of the Diablo Canyon Power Plant (*see* Senate Bill (SB) 846 (Dodd, 2022)); and
- Creating legally binding goals for carbon neutrality (AB 1279 (Muratsuchi, 2022) and SB 1020 (Laird, 2020)).

While policy and regulatory developments are ongoing with respect to some of these items, the clear collective trend points towards increasing demand for clean electricity and increasing need for additional resources. This section of the ruling is focused on any additional changes the Commission could make in the near-term to encourage LSEs to continue with successful procurement of electricity resources in a difficult market environment, prior to our next formal need assessment that will take place over the next several months and prior to the implementation of a programmatic approach such as discussed in Attachment A to this ruling. Observers of the electricity markets will recognize that, in addition to all of the above factors, LSEs and developers are facing exogenous factors such as supply chain impacts on availability of raw materials, import investigations with respect to solar panels, tightening of the economy in the face of inflation, increased demand for clean energy resources throughout the



west and globally, and other factors that have material impacts on the development of projects.<sup>3</sup>

In light of all of the above trends and factors that put generally-increasing emphasis on the need for procurement of resources and development of new clean energy resources, the Commission has continued to encourage LSEs to procure as much as possible to meet both current and future electricity resource needs.

In addition, the Preferred System Portfolio adopted in D.22-02-004 shows the need for approximately 35,000 MW of new resources on the electric system by 2030 in order to meet both reliability and GHG goals. Even if all of the incremental resources ordered to date were to come to fruition, that procurement will only meet roughly half of the additional resources needed by the end of the decade. Thus, it is imperative that LSEs continue to procure, both to meet these needs in the next decade, in advance of any additional procurement requirements from the Commission, as well as due to the potential for some projects currently in development not to reach commercial operation.

LSEs should also note that, in the event of a failure to meet one or more of the required procurement targets, the Commission will carefully evaluate whether an LSE continued to procure to help meet system reliability and GHG needs, even if the procurement is slightly delayed or otherwise does not meet the letter of the decisions' requirements.

In general, indications are that projects expected to meet the requirements of D.19-11-016 for the years 2021 and 2022 have been contracted for and are coming online, and although some have been delayed in terms of contracted

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<sup>3</sup> Also note the work of the Tracking Energy Development Task Force, with more information available at the following link: [www.cpuc.ca.gov/trackingenergy](http://www.cpuc.ca.gov/trackingenergy).

online dates, collectively LSEs appear to have brought online new resources that meet the D.19-11-016 requirements for 2021 and 2022. As of this ruling, it appears that most projects required for 2023 in D.19-11-016 are also contracted, but it remains to be seen whether the projects will come online on time to meet Summer 2023 needs. In addition, progress towards D.21-06-035 requirements for 2023 and 2024, which are large, appears to be lagging. The next opportunity for a formal check of status of D.19-11-016 procurement will be with the February 1, 2023 progress filings due from LSEs as provided for in D.20-12-044, when the Commission will determine whether any backstop procurement may be needed for any LSEs who have failed to meet their obligations. This will also be the first opportunity for a formal compliance check related to D.21-06-035 procurement.

In the meantime, this ruling seeks input from parties on a specific issue where some clarification from the Commission may result in the removal of a barrier to procurement of additional resources. This specific issue is with respect to how the list of baseline resources for D.19-11-016 was developed. In D.19-11-016, the baseline that was set included a number of planned resources that had not yet come online as of the date of the order, but where contracts had been signed. The intent was to order procurement that is in addition to those resources that were already planned and in the pipeline.

Currently, however, Commission staff are working to identify how many capacity resources are listed in the baseline, but still have not come online as of the date of this ruling. In most, if not all, cases, the reliability of the electric system would benefit from having these resources online, but because of the way the baseline was set for D.19-11-016, they do not “count” toward the D.19-11-016 additional capacity requirements. Likewise, because the baseline for the

additional procurement required in D.21-06-035 was built upon the D.19-11-016 baseline, the resources also currently would not count toward D.21-06-035 requirements, by the terms of the Commission's previous orders.

These resources are important for reliability and were already being counted on to deliver when the Commission considered the additional procurement requirements. At the same time, if the Commission were to allow them to count toward D.19-11-016 or D.21-06-035 procurement requirements, the reliability benefits of the incremental resources required in those orders would be diluted by the same amount.

To remedy this situation, this ruling proposes the following solution, and seeks parties' feedback on it. First, LSEs are requested to identify, in response to this ruling, "baseline" resources that have not yet come online.

Then, this ruling suggests that the "baseline" for both D.19-11-016 and D.21-06-035 procurement be reframed to allow any resource that has come online since January 1, 2020, to count toward the LSE's procurement obligations.

In general, incremental resources coming online after January 1, 2020, would be counted first toward the D.19-11-016 obligations, with any excess applied to D.21-06-035, assuming the particular resource meets the specific attributes required for the specific procurement categories in the D.21-06-035 obligations.

In addition, an amount of net qualifying capacity commensurate with the capacity of baseline resources that have not yet come online would be added to the obligations of all LSEs collectively in 2025, to account for the dilution effect of allowing resources in the original baseline to count toward D.19-11-016 or D.21-06-035 obligations. Alternatively, LSEs with baseline resources not yet online could identify the resource to the Commission and have that amount of

capacity added to their own individual obligation in 2025. Either way, this would act to maintain the same level of reliability expected by the Commission when D.21-06-035 was issued,<sup>4</sup> while increasing the flexibility of LSEs to bring new resources online and continue procuring toward their obligations.

Finally, going forward, should the Commission adopt this proposal, new resources would be considered incremental if their actual online date was later than the January 1, 2020 online date cutoff suggested here. Thus, there would no longer be a “baseline” list maintained by Commission staff for testing whether procurement “counts” toward a particular obligation. The eligibility of a new resource toward compliance with procurement orders would be based on online date, along with any other criteria required by the future decision, with no relation to existing baselines.

### **2.1. Questions for Parties**

Parties and LSEs are asked to respond to the questions below in response to Section 2 of this ruling. Comments on the below questions are due to be filed and served no later than September 26, 2022. Reply comments may be filed and served no later than October 6, 2022.

1. For LSEs: Identify resources and their capacity amounts that were listed in the D.19-11-016 baseline but that are not yet online.
2. Describe why you support or oppose the proposal described in Section 2 above to modify the approach to “baseline” for purposes of procurement in compliance with D.19-11-016 and D.21-06-035 requirements to be based on actual online date for new resources. If you prefer a different change to D.19-11-016 and/or D.21-06-035 baseline requirements, describe it in detail.

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<sup>4</sup> The need determination analysis that led to D.21-06-035 did include an allowance for some project failure.

3. Are there other modifications to prior decisions that the Commission should make to facilitate continued procurement by LSEs subject to the IRP process and the requirements of D.19-11-016 and D.21-06-035? If so, describe your proposal in detail.

**IT IS RULED** that:

1. Interested parties may file and serve comments in response to Section 2 and the questions in Section 2.1 of this ruling by no later than September 26, 2022.
2. Reply comments in response to Section 2 and the questions in Section 2.1 of this ruling may be filed and served no later than October 6, 2022.
3. Comments in response to Section 1, the questions in Section 1.1, and Attachment A to this ruling may be filed and served by no later than November 7, 2022.
4. Reply comments in response to Section 1, the questions in Section 1.1, and Attachment A to this ruling may be filed and served by no later than November 28, 2022.

Dated September 8, 2022, at San Francisco, California.

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

# **ATTACHMENT A**