

Decision 20-07-009 July 16, 2020

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Develop an Electricity Integrated
Resource Planning Framework and to
Coordinate and Refine Long-Term
Procurement Planning Requirements.

Rulemaking 16-02-007

**DECISION DENYING CALIFORNIA ENERGY STORAGE ALLIANCE
PETITION FOR MODIFICATION OF DECISION 19-11-016**

Summary

This decision denies the petition for modification (PFM) of Decision (D.) 19-11-016 filed by the California Energy Storage Alliance (CESA) on April 1, 2020. In its PFM, CESA sought to require that any contracts entered into by the investor-owned utilities for the online date of August 1, 2021 be processed by the Commission with Tier 2 advice letters, instead of Tier 3 advice letters as required by D.19-11-016.

Though the PFM is denied, this decision commits to processing the IOU filings for 2021 as quickly as possible, including utilizing all appropriate means of expediting Tier 3 advice letters.

This proceeding remains open to address one other petition for modification and for purposes of processing intervenor compensation claims.

1. Background

Decision (D.) 19-11-016 was issued in November 2019 to require procurement by all load-serving entities (LSEs) within the Commission's purview for integrated resource planning (IRP) purposes, due to an identified potential reliability challenge beginning in 2021 and extending through at least 2023.

By the terms of D.19-11-016, at least 50 percent of the required incremental capacity in megawatts (MW) must be online by August 1, 2021. This deadline necessitates a very short timeframe for procurement of capacity, contract negotiations, Commission approval, and project financing and construction, for the investor-owned utilities (IOUs), whose contracts must be approved by the Commission in order to provide for cost recovery in rates.

2. California Energy Storage Alliance Petition for Modification

On April 1, 2020, the California Energy Storage Alliance (CESA) filed a petition for modification (PFM) of D.19-11-016, seeking to have the Commission amend D.19-11-016 to allow the IOUs to file Tier 2 advice letters for approval of any incremental resource contracts executed to meet the 2021 compliance requirements and come online by the August 1, 2021 deadline. CESA's request would not apply to the 2022 and 2023 online dates for capacity procurement included in D.19-11-016.

CESA justified their request on the following grounds:

- Accounting for their project milestones, energy storage and other preferred resources can meet urgent 2021 system reliability needs with an expedited approval process and

reduce the reliance on once-through-cooling (OTC) facilities.

- An expedited approval process to address urgent reliability needs is supported by Commission precedent.
- Parties still maintain due process while other protections are in place to ensure reasonableness of proposed contracts for approval.
- Contract approval processes are otherwise unchanged from the decision for contracts submitted for approval to meet 2022 and 2023 requirements.

CESA argued that due to the short period of time between contract signing and proposed online dates for projects, the typical Tier 3 advice letter Commission approval timeline would force many projects to proceed at risk with equipment procurement and construction activities without Commission approval for many months, which would significantly endanger the ability of projects to achieve financing, permitting, procurement, and construction milestones in order to hit the aggressive schedule that the Commission has directed.

CESA's PFM went on to detail the timelines expected for the three IOUs and their filing of advice letters for approval of contracts, based on solicitation schedules. CESA represented that as multiple solicitations and negotiations have launched in response to D.19-11-016, CESA has found that the project financing, equipment procurement, and construction timelines may make it challenging to achieve a commercial online date of August 1, 2021 for resources procured by LSEs to meet the 2021 procurement requirements. CESA also argued that although they generally supported an expedited timeline during consideration of

D.19-11-016, “new information on key project development milestones and time needs emerged as the amount of time taken to launch and complete competitive solicitations materialized differently than expected.”¹

3. Responses to the CESA PFM

Concurrently with its PFM, CESA filed a motion to shorten time for responses to its motion. Via email ruling, the assigned Administrative Law Judge (ALJ) partially granted CESA’s motion to shorten time for responses, which were due April 21, 2020.

Timely responses to CESA’s PFM were filed by: Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E), jointly; (Joint Utilities); the California Environmental Justice Alliance (CEJA) and Sierra Club, jointly; Environmental Defense Fund (EDF); Fluence Energy, LLC (Fluence); 350 Bay Area; LS Power Development, LLC (LS Power); and the Public Advocates Office (Cal Advocates).

The Joint Utilities generally argued that, although they agree with CESA on the importance of expedited Commission approval of any IOU contracts to meet the D.19-11-016 requirements for August 1, 2021 deliveries, a Tier 3 advice letter process is necessary so that the Commission can issue resolutions with specific findings on issues on a timeline that increases the likelihood of needed system reliability resources coming online by August 1, 2021. They argued that their current timelines meet these needs and nothing needs to be changed.

¹ CESA April 1, 2020 PFM, at 5.

Due to the aggressive timeline, the Joint Utilities argued that an expedited Tier 3 advice letter process should be used, to allow time for project development after Commission approval, in time for the system reliability needs by August 1, 2021.

CEJA and Sierra Club asked the Commission to deny the CESA PFM altogether, but allow expedited Tier 3 advice letter processing on a case-by-case basis, when requested by the IOU when filing the advice letter. Expedited Tier 3 treatment would generally involve shortening protest and comment timelines on the advice letter and resolution, respectively. CEJA and Sierra Club also originally opposed the use of the advice letter process at all, arguing that it does not give parties enough time to protest planned projects. Thus, now CEJA and Sierra Club have argued that the Commission should not further diminish parties' protest rights by moving from a Tier 3 to a Tier 2 advice letter process.

CEJA and Sierra Club offer alternative suggestions for expediting Tier 3 advice letters on a case-by-case basis, if the filing IOU requests it and after considering party comments on the IOU request. CEJA and Sierra Club argued that a minimum of 20 days for protests is reasonable in certain circumstances, but not in all circumstances, and that the Commission should take a narrowly tailored approach to shortening timeframes. Thus, ultimately, CEJA and Sierra Club argued that the Commission should deny the CESA PFM with respect to Tier 2 advice letters, but partially grant the PFM and allow expedited Tier 3 advice letters on a case-by-case basis, with at least 20 day's response time for protests.

350 Bay Area's response generally echoed the comments of CEJA and Sierra Club, arguing that a Tier 2 advice letter in all cases goes too far, but that the Commission should require some expediting for Tier 3 advice letters.

EDF filed comments in support of the CESA PFM, arguing that additional incremental procurement now reduces the likelihood of a need to rely on dirtier once-through-cooling fossil-fueled power plants in 2021. EDF also supported CESA's general characterization of the aggressive timeline for procurement and project development, and encouraged the Commission to be creative in finding ways to expedite the processing and approval of advice letters to bring the new resources online at lowest cost to consumers. EDF suggested, for example, that comment periods on resolutions be waived where the advice letters were not protested. EDF also argued that there are already consumer protections in place, in the form of procurement review groups and independent evaluators, and that the Commission should retain these mechanisms.

Fluence filed comments in general support of the CESA PFM, stating that a two-year timeframe from solicitation to online dates for projects is more normal, and the current circumstances require the Commission to expedite approvals. In addition, Fluence argued that the additional pressure to the timelines created by the COVID-19 pandemic makes it even more important for the Commission to grant CESA's PFM, because of additional slowdowns in shipping and financing.

LS Power also supported the CESA PFM in its response, and would accept either Tier 2 advice letters or an expedited approach to Tier 3 advice letters. LS Power also attached to its comments a letter of support from a group of storage companies, including NextEra Energy Resources, LG Chem, and SPower.

Cal Advocates filed a response opposing the CESA PFM altogether, stating that the CESA request would deprive all parties of their due process rights to review the contracts of the utilities, as well as deprive the public of transparency with respect to utility contracting. Cal Advocates also argued that procurement review groups and independent evaluators are not a substitute for party review of the advice letter filings.

4. Discussion

CESA is correct that the timeline for bringing incremental capacity online by August 1, 2021 is extremely aggressive considering normal timelines for solicitations, contract negotiations, advice letter filings, processing of resolutions, and project financing and construction. CEJA/Sierra Club, EDF, and 350 Bay Area are also correct that the Commission wishes to minimize the need for reliance on OTC power plants, to the extent possible, and the sooner incremental resources can come online to meet the reliability needs, the smaller the need will be to run OTC plants.

However, the Commission was aware of the tight timelines when D.19-11-016 was issued. In advance of the issuance of the decision, numerous parties opposed the use of the advice letter process, and argued that the Commission should instead require applications for approval of IOU contracts. The decision settled on the Tier 3 advice letter process as the best process, balancing the required due process for parties with the need to expedite the approval timeline. CESA, in its PFM, does not make a compelling case for what has changed since the issuance of D.19-11-016. Though Fluence does point out the COVID-19 situation as a challenging factor for developers, it is unclear what

the true impact will be on project development. Thus, we do not find that there is a strong rationale for approving the CESA PFM, and therefore will deny it.

We also agree with the Joint Utilities that issuance of a Commission resolution making certain findings about the approval of projects is important for the certainty of projects for both the IOUs and the developers seeking financing for their projects. We do encourage both the IOUs and the project developers to move ahead in parallel with any aspects of their projects that may not be dependent on Commission approval, to the extent possible.

Because August 1, 2021 is very soon in the normal course of project development timelines, we do agree that the Commission should and will do everything possible to expedite the processing of the Tier 3 advice letters that the IOUs file for projects due to come online by August 2021. In particular, we agree with EDF and CEJA/Sierra Club that protest periods may be shortened to 20 days when requested by the filing IOU. In addition, Commission staff may shorten or waive the comment period on a resolution appearing on the Commission's agenda. Commission staff will do everything possible to expedite the processing of the advice letters.

We encourage the IOUs to file their advice letters as soon as possible with no delays from the timeframes already published. We also encourage the IOUs to request expedited treatment for their Tier 3 advice letters where they do not expect any controversy. Finally, we encourage the IOUs to work with the developers of projects to ensure that the risk of delays is balanced and shared, such that any reasonable delays on the part of the IOUs or the Commission still result in successful projects and not abandoned ones. The Commission wants to

see a successful development process for the incremental capacity needed between 2021 and 2023. Our staff stand ready to process the Tier 3 advice letters as soon as they are filed, in the most expeditious manner possible. We expect the IOUs to work in good faith with the project developers to ensure that the necessary projects come to fruition.

5. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments on the proposed decision were filed on June 23, 2020 by CESA, EDF, and SCE. No reply comments were filed.

The comments of EDF and SCE were broadly supportive of the proposed decision, while also encouraging the Commission and staff to take all steps possible to expedite the processing of the IOU advice letters addressing D.19-11-016 requirements.

CESA's comments also appreciated the commitment to process the advice letters as expeditiously as possible, but they requested that the proposed decision be amended to give Commission staff more discretion to reduce or eliminate comment periods on resolutions and approve contracts as soon as possible. Nothing in the proposed decision was intended to limit Commission staff discretion to expedite consideration of advice letters. As such, we have made the minor changes suggested by CESA consistent with the direction in the proposed decision.

In addition, CESA's comments requested a commitment to consider resolutions on the IOU advice letters at the July 16, 2020 Commission meeting. Given this decision is being considered at that same meeting, we decline to modify the decision to make a further commitment on a specific Commission agenda date, beyond encouraging Commission staff to meet the earliest feasible timetable for Commission consideration.

6. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Julie A. Fitch is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. D.19-11-016 required LSEs to bring online 3,300 MW of incremental capacity for system reliability purposes, beginning with 50 percent of the capacity available to deliver by August 1, 2021.
2. D.19-11-016 required IOUs to file Tier 3 advice letters for Commission approval of projects to provide incremental capacity by August 1, 2021, as well as August 1, 2022 and August 1, 2023.
3. Approval of incremental system capacity between 2021 and 2023 will reduce the need for reliance on OTC power plants.
4. Before issuing D.19-11-016, the Commission considered proposals for the appropriate process to consider approval for IOU projects required by the decision, and selected the Tier 3 advice letter process to balance the requirements for due process for parties with the need to expedite the approval timeframe. Numerous parties, prior to issuance of D.19-11-016, opposed the use of the

advice letter process at all, and would have preferred the Commission require applications for IOU projects that met the terms of the decision.

5. CESA's PFM, filed April 1, 2020, sought to convert the Tier 3 advice letter requirement for IOUs to a Tier 2 advice letter process.

6. Commission resolutions issued in response to Tier 3 advice letters can provide certainty to assist developers in obtaining project financing, as well as providing certainty of cost recovery for IOUs.

7. Tier 2 advice letters may not result in Commission-adopted resolutions.

Conclusions of Law

1. The CESA PFM does not include a strong justification for what has changed since the issuance of D.19-11-016 that requires a Tier 2 advice letter process instead of a Tier 3 advice letter process.

2. The Commission should deny the CESA PFM and keep the requirement for Tier 3 advice letters in place.

3. The timeframe is short between now and an online date of August 1, 2021 for the incremental capacity required by D.19-11-016. This timeframe will require expedited approaches by the IOUs, project developers, and Commission staff.

4. IOUs should file their advice letters for projects providing incremental capacity by August 1, 2021 as soon as possible.

5. IOUs should give attention to a reasonable balancing of risk of delays between project developers and IOU ratepayers.

6. The Commission should ensure that the IOUs conduct a successful solicitation and contracting process to meet the requirements of D.19-11-016.

7. The Commission should conduct an expedited Tier 3 advice letter process, including shortening protest periods, for projects where the IOU has requested expedited treatment.

8. Commission staff should consider shortening or eliminating comment periods on resolutions, where appropriate, in response to the advice letter filing.

9. The Commission should issue resolutions for all IOU projects proposed in compliance with D.19-11-016, to provide certainty both to IOUs and project developers.

O R D E R

IT IS ORDERED that:

1. The April 1, 2020 Petition for Modification of Decision 19-11-016 filed by the California Energy Storage Alliance is denied.

2. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall file their Tier 3 advice letters as soon as possible for projects delivering incremental capacity in compliance with Decision 19-11-016 with online dates of August 1, 2021.

3. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company may request expedited treatment for Tier 3 advice letters expected not to be controversial, to meet the Decision 19-11-016 requirements for incremental capacity by August 1, 2021. In such cases, where warranted, Commission staff may shorten protest periods, and reduce or eliminate comment periods on resolutions responding to advice letters.

4. Rulemaking 16-02-007 remains open, to address another petition for modification and to process intervenor compensation claims.

This order is effective today.

Dated July 16, 2020, at San Francisco, California.

MARYBEL BATJER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners