

Decision 24-09-006 September 12, 2024

**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

**DECISION ALLOWING BRIDGE RESOURCES FOR ALTERNATIVE  
COMPLIANCE WITH DIABLO CANYON REPLACEMENT RESOURCE  
CATEGORY IN DECISION 21-06-035**

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**DECISION ALLOWING ZERO-EMITTING BRIDGE RESOURCES FOR  
ALTERNATIVE COMPLIANCE WITH DIABLO CANYON REPLACEMENT  
RESOURCE CATEGORY IN DECISION 21-06-035**

**Summary**

This decision allows load-serving entities (LSEs) with compliance obligations in Decision (D.) 21-06-035 as part of the category of resources designed to replace the attributes of the Diablo Canyon Power Plant, to use short-term alternative compliance options as defined herein.

LSEs are authorized to use contracts with resources that either emit zero greenhouse gases or are otherwise eligible under the renewables portfolio standard requirements, as bridge resources for a period of not more than three years from the compliance deadline of June 1, 2025. This also includes the opportunity to re-contract with resources that are retiring or have expiring or expired contracts, only in the context of this decision and not for any other D.22-06-035 compliance purposes.

The use of unspecified imports, as defined by the California Air Resources Board for Cap-and-Trade Program compliance, is prohibited for this alternative compliance purpose, since the emissions characteristics of the resources cannot be determined.

This proceeding remains open.

**1. Background**

Decision (D.) 21-06-035 required all load-serving entities (LSEs) to acquire specific resources to ensure reliability following the planned closure of the Diablo Canyon Power Plant (Diablo Canyon), including a total of 2,500 megawatts (MW) of zero-greenhouse gas (GHG)-emitting capacity, along with an energy component, with the new resources required to be online by June 1, 2025. After D.21-06-035 was issued, Diablo Canyon's retirement date was

extended by Senate Bill 846 (Stats. 2022, Ch. 239). However, Public Utilities Code Section 454.52(f)(1),<sup>1</sup> requires the Commission to conduct integrated resource planning as if Diablo Canyon is still retiring by 2025.

D.24-02-047 also rejected a petition for modification filed by Southern California Edison Company (SCE) and Pacific Gas and Electric Company (PG&E), that would have extended the deadline for delivery of the Diablo Canyon replacement resources required by D.21-06-035 for two years, in part due to electric reliability concerns in 2025. Modeling analysis assumed that Diablo Canyon units would retire as originally planned in 2024/2025 and showed a shortfall of approximately 1,200 MW, before accounting for the retention of Diablo Canyon and the Strategic Reliability Reserve generation units.

In D.24-02-047, the Commission also acknowledged the utilities' stated difficulties in procuring eligible resources, and expressed openness<sup>2</sup> to exploring other resource procurement options to assist with electric system reliability in 2025, while still bringing online the required resources to assist with the replacement of Diablo Canyon energy and other benefits as soon as possible.

An Administrative Law Judge ruling (ALJ Ruling) was issued on May 21, 2024 with an attached staff proposal to allow short-term, "bridge" contracts to temporarily meet the Diablo Canyon replacement resource obligations. According to the staff proposal, the bridge resources would be required to be zero-GHG-emitting or eligible for the renewables portfolio standard (RPS)

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<sup>1</sup> Public Utilities Code Section 454.52(f)(1) states: "The commission shall not include the energy, capacity, or any attribute from Diablo Canyon Unit 1 beyond November 1, 2024, or Unit 2 beyond August 26, 2025,, in the adopted integrated resource plan portfolios, resource stacks, or preferred system plans."

<sup>2</sup> See D.24-02-047 at 123.

program, cover a bridge period of no more than three years, and otherwise meet all of the requirements for Diablo Canyon replacement resources in D.21-06-035, including incrementality requirements.

Parties were invited to file opening comments in response to the ALJ Ruling and staff proposal by June 11, 2024, and file reply comments by June 21, 2024.

The following parties timely filed opening comments: California Environmental Justice Alliance (CEJA) and Sierra Club, jointly; California Independent System Operator (CAISO); Environmental Defense Fund (EDF); PG&E; Protect Our Communities Foundation (PCF); Public Advocates Office of California (Cal Advocates); San Diego Gas & Electric Company (SDG&E); Shell Energy North America (Shell); and SCE.

The following parties filed timely reply comments: California Community Choice Association (CalCCA); CEJA and Sierra Club, jointly; EDF; Green Power Institute (GPI); PG&E; PCF; SDG&E; and SCE.

## **2. Necessity of a Bridge for Diablo Canyon Replacement Resources Required by D.21-06-035**

This section discusses whether a bridge mechanism is necessary or advisable to allow LSEs alternative options for compliance with the Diablo Canyon replacement category of resources required by D.21-06-035. In general, the rationale behind the staff proposal was that, given a very challenging procurement environment, LSEs were not likely to meet their requirements for Diablo Canyon replacement resources in time for the June 1, 2025 integrated resource planning compliance deadline set by D.21-06-035. PG&E and SCE indicated in their original PFM that the procurement of the energy component of the Diablo Canyon replacement category of resources was particularly

challenging. The staff proposal suggested that, because these goals and deadlines are important for reliability, LSEs should be given another option for securing capacity and energy requirements in the near term.

Thus, the staff proposal suggested authorizing LSEs to secure short-term replacement contracts for zero-GHG-emitting or RPS-eligible resources for a period of no more than three years, similar to bridge resources authorized for other capacity required to be procured under D.21-06-035.

### **2.1. Comments of Parties**

The majority of parties support the staff proposal. CAISO comments that the staff proposal will aid in reliability in 2025 and 2026. PG&E supports the staff proposal, both for reliability and affordability reasons, arguing that the bridge resource option will be less expensive for ratepayers. Cal Advocates supports the staff proposal because of the potential for ratepayer cost savings, but not for reliability reasons. SCE supports the staff proposal as a creative solution and offers several implementation recommendations. SDG&E also supports the staff proposal, but wants the Commission to allow imports paired with renewable energy credits to count towards the compliance obligation. CEJA and Sierra Club also generally support the staff proposal, but do not want to allow any emitting resources such as biomass to count toward the LSEs' obligations. Shell also generally supports the staff proposal, but asks for more eligibility for unspecified imports.

CalCCA is neutral on the proposal, but asks that whatever is adopted be applied consistently across all LSEs. EDF is also neutral, but opposes any provisions that may allow for an increase of out-of-state emissions, even if California's emissions footprint does not increase.

PCF is generally opposed to the staff proposal, arguing that there is no actual reliability need in 2025. GPI similarly opposes the staff proposal, pointing out that there is no reliability need because Diablo Canyon is, in fact, still online and producing energy.

## **2.2. Discussion**

In this decision, we do not re-open the question of whether or not there is a need for the procurement ordered in D.21-06-035. The staff proposal offered an alternative compliance mechanism for LSEs to procure the Diablo Canyon replacement resources required by D.21-06-035, which we address herein.

We agree with Cal Advocates and PG&E that ratepayer cost savings is an important motivation for offering the bridge contract option presented in the staff proposal. In addition, system reliability may also be enhanced by allowing short-term contracts as a bridge to bringing the clean and firm resources specified by the Diablo Canyon replacement category online. While the Diablo Canyon Power Plant remains online, we expect the LSEs to procure the replacement category of resources to assist with the orderly retirement of Diablo Canyon. We also note our continuing obligations under Public Utilities Code Section 454.52(f)(1) which requires us to plan for Diablo Canyon's 2025 retirement.

In the meantime, allowing bridge resources for the Diablo Canyon replacement category may help fill reliability gaps, while minimizing ratepayer costs. For these reasons, we approve the option for LSEs to use short-term (no more than three-year) resources to count toward the Diablo Canyon replacement category of resources required in D.21-06-035.

**3. Implementation Details Associated with Bridge Resources for Diablo Canyon Replacement Resource Category in D.21-06-035**

**3.1. Emissions Standard to Qualify as a Bridge Resource**

This section discusses the emissions standard for bridge contracts. The ALJ Ruling and associated staff proposal proposed that bridge resources be allowed to count towards D.21-06-035 Diablo Canyon replacement category compliance, as long as they are either zero-GHG-emitting or qualify under the RPS requirements.

**3.1.1. Comments of Parties**

CEJA and Sierra Club argue that the staff proposal would violate the terms of Senate Bill (SB) 1090 (Stats. 2018, Ch. 561), which governs the retirement of Diablo Canyon, because it requires that the Commission “shall ensure that integrated resource plans are designed to avoid any increase in emissions of greenhouse gases [GHG] as a result of the retirement of the Diablo Canyon Units 1 and 2 powerplant.”<sup>3</sup> CEJA and Sierra Club argue that certain emitting resources, such as biomass and biomethane, may qualify for eligibility under the RPS program, but should not qualify here for bridge resources for the Diablo Canyon replacement resource category in D.21-06-035.

**3.1.2. Discussion**

D.21-06-035 discussed the emissions characteristics of resources that would be allowed to be used for compliance with the Diablo Canyon replacement category requirements. D.21-06-035 determined that resources must have zero on-site GHG emissions, or if the resources have emissions, they must otherwise

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<sup>3</sup> See Public Utilities Code Section 712.7(b). Hereinafter, all references to code sections are to the Public Utilities Code, unless otherwise noted.



qualify under the RPS eligibility requirements.<sup>4</sup> We do not modify those requirements here, because we are addressing ways to comply with D.21-06-035, and not determining eligibility requirements anew. In determining whether a zero-emitting bridge contract is eligible for compliance purposes, Commission staff will refer to, as needed, existing guidance that already exists in the RPS program.<sup>5</sup>

### **3.2. Commission Review Process for Bridge Contracts for Diablo Canyon Replacement Resources**

This section discusses the appropriate review process to be used for the Commission to review proposed bridge contracts in compliance with the Diablo Canyon replacement resource requirements in D.21-06-035. The ALJ ruling and staff proposal included a requirement that when an LSE is proposing to use a bridge contract for alternative compliance with D.21-06-035 requirements, the submission must be accompanied by a description of the long-term Diablo Canyon replacement capacity that the LSE is pursuing and an explanation for the delays in procuring that capacity and/or energy, leading to the signing of the bridge contract.

#### **3.2.1. Comments of Parties**

In opening comments, SCE requests that a “purchase, swap, or sale of RPS energy and/or renewable energy credits (RECs) procured for Diablo Canyon Bridge Contract purposes may be submitted for approval under a Tier 1 advice

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<sup>4</sup> See D.21-06-035 at 44.

<sup>5</sup> Current guidance as to the RPS eligibility of biomass and biomethane can be found in the *Renewable Portfolio Standard Eligibility Guidebook*, available at: <https://www.energy.ca.gov/programs-and-topics/programs/renewables-portfolio-standard>.

letter.”<sup>6</sup> SCE argues that RPS-compliant contracts are approved under the investor-owned utilities’ (IOUs’) RPS Procurement Plans, which can require a Tier 3 advice letter for contracts submitted for RPS compliance. SCE argues that the Tier 3 review process can be lengthy and is therefore inappropriate here, given the time-sensitive nature of the Diablo Canyon replacement requirements and their near-term deadline of June 1, 2025 included in D.21-06-035.

In opening comments, Cal Advocates recommends that IOUs submit bridge contracts as Tier 2 advice letters. Cal Advocates also outlines several components that they recommend be included in a Tier 2 advice letter filing.

### **3.2.2. Discussion**

As a preliminary matter, we agree with the staff proposal that any LSE submitting a bridge contract in compliance with this decision in any manner (whether advice letter or procurement data filing) should include a description of the long-term Diablo Canyon replacement capacity that the LSE is pursuing and an explanation for the delay in procuring that capacity and/or energy. This will help the Commission assess progress towards the D.21-06-035 requirements and those of SB 1090.

We note that only the IOUs’ bridge contracts require up-front approval by the Commission in order for the IOUs to be authorized to recover the costs of the contracts. Other LSEs may submit evidence of any contracts that comply with the standard of this decision and D.21-06-035 via their regular semi-annual procurement data filings.

Next, we recognize that IOU contracts may be submitted to comply with multiple program rules simultaneously (such as RPS, resource adequacy, or IRP

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<sup>6</sup> SCE Opening Comments at 2-3.

procurement requirements), which can create a more complex review process. However, it is not appropriate for us to modify the compliance standards of the RPS program in this decision, since those rules are set in another proceeding and may have different purposes.

Therefore, we will continue with the same review process as D.21-06-035 specifies,<sup>7</sup> which allows IOUs to submit contracts via a Tier 1 advice letter if it has already been approved by the Commission in another venue. As SCE outlines in opening comments, if a bridge contract meets the criteria to be approved via Quarterly Compliance Report in the IOU's Bundled Procurement Plan, that can constitute the first level review by the Commission, and therefore a Tier 1 advice letter would be appropriate here, if it includes the explanation required with respect to progress toward long-term Diablo Canyon replacement capacity and/or energy and a discussion of the associated delays.

For the situation where an RPS contract is also submitted as a bridge resource for compliance with D.21-06-035, we recommend that in addition to submitting the contract for approval under the RPS program, the IOU should submit the required contract and associated documentation, either as part of their regular semi-annual procurement data filing or directly via email to [IRPDataRequest@cpuc.ca.gov](mailto:IRPDataRequest@cpuc.ca.gov) to reach IRP compliance staff, or both.

We reject the Cal Advocates proposal to require Tier 2 advice letters for IOUs, because this would add an additional layer of complexity and time delay, without necessarily any advantage for overall regulatory oversight. There are already established procedures for IOUs to seek cost recovery for RPS-eligible

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<sup>7</sup> D.21-06-035 Ordering Paragraph 14.

contracts and for those that fall under their Bundled Procurement Plan and we see no advantage to adding another requirement here.

### **3.3. Issues Associated with Unspecified Imports**

We now consider whether unspecified imports should be allowed to fulfill the LSE's requirements for bridge contracts pursuant to D.21-06-035. The ALJ ruling and staff proposal included the requirement that a bridge resource be zero-GHG-emitting or RPS eligible, and also proposed that unspecified imports be prohibited from being used as a bridge for Diablo Canyon replacement resource requirements.

#### **3.3.1. Comments of Parties**

In opening comments, both Shell and PG&E request clarification as to the definition of unspecified imports. PG&E interprets the definition in the staff proposal as aligning with the definition used by the California Air Resources Board (CARB), rather than the definition used by the Commission in the Resource Adequacy program. PG&E states that the Resource Adequacy program's definition of unspecified imports is problematic because, as an example, hydroelectric resources from the Northwest, which could provide value as bridge contracts, are not classified as "resource-specific" for Resource Adequacy purposes.<sup>8</sup> Shell simply requests clarification as to whether unspecified imports are eligible for use as bridge contracts.

PG&E also requests that unspecified imports (regardless of definition) be allowed to be "paired" with Renewable Energy Credits (RECs) to be as bridge contracts for alternative compliance with the D.21-06-035 requirements for

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<sup>8</sup> PG&E Opening Comments at 3.

Diablo Canyon replacement resources.<sup>9</sup> PG&E argues that this paired product, which is referred to as an “RPS adjustment,” meets the requirements in California’s Cap-and-Trade Regulation promulgated by CARB.<sup>10</sup> Thus, PG&E would like such a product to count for purposes of the zero-emitting bridge contract requirements for alternative compliance with D.21-06-035 Diablo Canyon replacement resource requirements.

### **3.3.2. Discussion**

To resolve these issues, we start by referring again to the emissions standard set in D.21-06-035 for Diablo Canyon replacement resources, which is that the resources must have “zero-on-site emissions or, if the resources have emissions, they must otherwise qualify under the RPS eligibility requirements.”<sup>11</sup> Since we are not modifying this standard in this decision, Commission staff will need to be able to verify the provenance of any resource in question that is being used to satisfy the Diablo Canyon replacement category of resources. Any contract, product, or solution – import or otherwise – for which Commission staff cannot verify the resource type of the generator is ineligible.

As to the definition of unspecified imports for purposes of compliance with this decision, we have reviewed the relevant definitions in the CARB Mandatory Greenhouse Gas Reporting Regulations under the Cap-and-Trade Program, as well as the Resource Adequacy definition. According to the CARB

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<sup>9</sup> PG&E Opening Comments at 4.

<sup>10</sup> The conditions that must be met to use an RPS adjustment are described in the California Code of Regulations, Title 17, Section 95852. See also *RPS Adjustment: Past and Future*. Presentation by CARB, December 14, 2015. Available at: <https://ww2.arb.ca.gov/sites/default/files/cap-and-trade/meetings/20151214/rpssb350.pdf>

<sup>11</sup> D.21-06-035 at 44.

regulations, unspecified imports do not have proof of direct delivery from or a contract with a specific generation facility.<sup>12</sup>

The Commission's Resource Adequacy program uses the terms "non-resource-specific" and "unspecified imports" interchangeably. Non-resource-specific imports are defined under the Resource Adequacy program as "imports that are not associated with a specific resource or unit."<sup>13</sup> Non-resource-specific resources are eligible under the Resource Adequacy program provided that they meet certain requirements, but it is important to note that the Resource Adequacy program is not chiefly concerned with emissions characteristics, given its focus on system reliability.

The CARB definition of unspecified imports is more relevant and provides guidance that most closely aligns with the emissions standards under D.21-06-035 for Diablo Canyon replacement resources. Under the CARB definition, for a specified resource, "the importer can claim a specific generation facility as the source of the imported electricity, through either an ownership stake or a written contract,"<sup>14</sup> while unspecified imports do not have proof of direct delivery from

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<sup>12</sup> Carbon Leakage and Competitiveness: California's Treatment of Imported Electricity and New Zealand's Synthetic Greenhouse Gas Levy. International Carbon Action Partnership, October 2021. Available at: <https://icapcarbonaction.com/en/publications/carbon-leakage-and-competitiveness-californias-treatment-imported-electricity-and-new>

<sup>13</sup> See 2024 "Filing Guide for System, Local, and Flexible Resource Adequacy Compliance Filings," September 28, 2023, at 48. Available at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/resource-adequacy-homepage/resource-adequacy-compliance-materials/guides-and-resources/final-2024-ra-guide-clean.pdf>.

<sup>14</sup> Carbon Leakage and Competitiveness: California's Treatment of Imported Electricity and New Zealand's Synthetic Greenhouse Gas Levy. International Carbon Action Partnership, October 2021, at 7. Available at: <https://icapcarbonaction.com/en/publications/carbon-leakage-and-competitiveness-californias-treatment-imported-electricity-and-new>

or a contract with a specific generation facility. We will adopt this definition of unspecified imports for purposes of compliance with this decision.

As to PG&E's question about whether unspecified imports paired with RECs would be eligible to be claimed as bridge contracts, we first look to whether these arrangements are RPS eligible. Under the CARB's regulations, the "RPS Adjustment" was implemented in 2010 as an "optional adjustment to the compliance obligation to recognize the cost to comply with the RPS program. [emphasis added]"<sup>15</sup> The RPS Adjustment was designed for cases in which renewable electricity was procured by an entity within California for the purpose of RPS compliance, but that electricity was not delivered directly to California and did not meet the source identification requirements in place at the time for renewable resources. In essence, the LSE that contracts for unspecified, imported energy can, if certain conditions are met, reduce its obligation under the RPS program by securing eligible RECs.<sup>16</sup> The RPS Adjustment process does not exist to classify a combination of unspecified imports and RECs as renewable resources, but rather to reduce the compliance obligations of an LSE. For purposes of this decision, that is a crucial distinction, because here we are trying to determine RPS eligibility. Thus, for purposes of determining eligibility of bridge resources for the D.21-06-035 Diablo Canyon replacement resource category and the alternative compliance mechanism adopted in this decision, we

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<sup>15</sup> RPS Adjustment: Past and Future. Presentation by the California Air Resources Board. December 14, 2015. Available at <https://ww2.arb.ca.gov/sites/default/files/cap-and-trade/meetings/20151214/rpssb350.pdf>.

<sup>16</sup> The conditions that must be met to use an RPS adjustment are described in the California Code of Regulations, Title 17, Section 95852.

will not permit a combination of unspecified imports paired with RECs to be used as bridge resources.

We will, however, permit contracts with CARB-approved Asset Controlling Suppliers (ACS) to count towards the requirements of this decision, even if the contract is not with a specific hydroelectric resource. CARB-approved ACSs typically have a large pool of hydroelectric resources, with much smaller amounts of emitting resources in their portfolios. Under CARB's Mandatory GHG Reporting program, these ACSs are assigned emissions factors for their fleets that are non-zero, but small. Hydroelectric resources in the Northwest are exactly the types of resources Commission staff had in mind when crafting the proposal in the ALJ ruling, and therefore we will allow contracts with CARB-approved ACSs to count toward the requirements of this decision.

### **3.4. Eligibility of Baseline Capacity Resources to Provide Bridge Resources**

Next, we turn to two proposals: a PG&E request to allow baseline capacity resources to provide the energy portion as a bridge resource, and a GPI request to allow baseline resources with retirement dates or expiring contracts prior to June 1, 2025 to qualify as bridge resources. The ALJ ruling and staff proposal did not address these issues.

#### **3.4.1. Comments of Parties**

PG&E, in its opening comments, requests that energy output from resources with online dates prior to January 1, 2020, be eligible for use as the energy component of a bridge resource to qualify for compliance with the Diablo Canyon replacement requirement in D.21-06-035. PG&E argues that this energy



was “given a zero NQC [net qualifying capacity] value” as part of the resource stack used to develop the baseline list of resources for D.21-06-035.<sup>17</sup>

GPI, in reply comments, suggests a different option for baseline resources, which is to allow existing zero-emitting and RPS-eligible resources with planned retirement dates or expiring contracts before June 1, 2025 to be eligible to serve as bridge resources for up to three years.<sup>18</sup> To support its proposal, GPI presents a list of zero-emitting and/or RPS-eligible baseline resources totaling 596 MW between 2019 and 2025. GPI argues that these resources can serve as a critical bridge and also support reliability.

### **3.4.2. Discussion**

Diablo Canyon replacement resources and, by extension, bridge contracts for alternative compliance, are unique in that they have both an energy and capacity component. The capacity secured to meet the Diablo Canyon replacement resource category in D.21-06-035 must be able to deliver at least five megawatt-hours (MWh) between 5 and 10 pm for each MW of incremental capacity claimed.<sup>19</sup> This requires, for example, that a storage resource be paired with sufficient energy to meet the requirement.

At a high level, PG&E is correct that the need determination and procurement orders in D.21-06-035 were denominated in capacity, not energy, for the other categories beyond the Diablo Canyon replacement category, and that energy on its own may not have been given an NQC value during the

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<sup>17</sup> PG&E opening comments at 5.

<sup>18</sup> GPI reply comments at 7-10.

<sup>19</sup> See D.21-06-035, Ordering Paragraph 6.

baseline analysis that led to D.21-06-035.<sup>20</sup> The Baseline List created as part of D.21-06-035 was developed to exclude capacity from existing or in-development resources from eligibility as new capacity in compliance with D.21-06-035.

However, in order to qualify as a bridge resource that provides a reliability benefit, an energy contract would still need to show that it provides incremental energy value and was not already under contract to provide its output to the system. Since there is not an energy output baseline for D.21-06-035, it would be impossible for Commission staff to verify incrementality of any such contracts. Therefore, we will not allow energy output from D.21-06-035 baseline capacity resources to count towards the bridge resources authorized in this decision.

The proposal from GPI is distinct from PG&E's, in that in order for a baseline resource to qualify as a bridge, it would only need to show that it had either a planned retirement date or an expiring contract prior to June 1, 2025. An LSE would be eligible to re-contract with such a resource that would be otherwise exiting the baseline, for a period of not more than three years. The resource would also be required to be zero-emitting and/or RPS-eligible. This proposal is in keeping with the purpose of this order, to allow flexibility to LSEs and lower costs to ratepayers. We will allow the re-contracting with expiring and/or retiring resources as of June 1, 2025 to qualify as bridge resources for a period of not more than three years from June 1, 2025.

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<sup>20</sup> More information on the Need Determination behind D.21-06-035 is available at the CPUC Integrated Resource Planning Procurement Track Website at: <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power-procurement/long-term-procurement-planning/more-information-on-authorizing-procurement/irp-procurement-track>

To be eligible, the LSE will need to reference the resource in the baseline, show the proposed contract, as well as evidence that the previous contract is expired or that the resource is otherwise planned for retirement.

We will also generally allow any LSE with a resource that aligns with the principles laid out in this decision to come forward with a Tier 2 advice letter laying out the factual situation and describing how the resource contract aligns with this decision.

### **3.5. LSE Recourse for Last-Minute Development Delays**

Finally, we consider PG&E proposal for a procurement exemption for LSEs with last-minute development delays for contracted resources. This issue was not addressed in the ALJ ruling or the staff proposal.

#### **3.5.1. Comments of Parties**

In opening comments, PG&E requests that in the event an LSE is notified of a “last-minute” delay to a resource by that resource’s developer, the LSE could be relieved from procuring bridge resources to replace that resource’s capacity and/or energy. PG&E proposes a set of criteria that would need to be met to qualify for this suggested procurement exemption.<sup>21</sup>

#### **3.5.2. Discussion**

We recognize the challenging procurement environment that LSEs must operate in to meet their obligations under D.21-06-035. The ALJ ruling and staff proposal, as well as this decision, were designed to help give LSEs more options for compliance with the Diablo Canyon replacement resource provisions of D.21-06-035. In the event of an unexpected last-minute delay to a Diablo Canyon replacement resource coming online, the LSE may be unable to act quickly

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<sup>21</sup> PG&E opening comments at 6.

enough to substitute a bridge resources. However, this is a generic issue across all required procurement. We decline to adopt a broad policy about last-minute resource delays in this context, and even for a subset of resources such as the Diablo Canyon replacement resources.

Though we decline to adopt PG&E's proposal, we emphasize that Commission staff will assess an LSE's compliance status holistically, both for Diablo Canyon replacement resources and IRP procurement generally, considering all of the LSE's efforts to procure resources and taking last-minute delay notices from developers into account.

#### **4. Summary of Public Comment**

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding. No public comments were received that addressed compliance issues with the Diablo Canyon replacement category of resources or the related ALJ ruling.

#### **5. Comments on Proposed Decision**

The proposed decision of ALJ Julie A. Fitch 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 were filed on August 29, 2024 by the following parties: AReM; CAISO; Cal Advocates; CalCCA; GPI; PCF; and PG&E.

Reply comments were filed on September 3, 2024 by the following parties: CalCCA; GPI; PG&E; Sierra Club and CEJA, jointly; and Shell.

This section summarizes the themes in comments from parties. Where warranted, changes have been made to the body of the decision consistent with the discussion below.

AReM is generally in favor of adoption of the decision, but requests a small change to Conclusion of Law 11, which discusses how compliance status will be assessed on LSEs in the event of last-minute delay notices from developers. Though this decision is chiefly concerned with delays associated with Diablo Canyon replacement resources, AReM requests broadening the application of the conclusion to apply to any IRP-related procurement, since developer delays could be associated with any procurement. While this decision is still focused on the Diablo Canyon replacement resources required in D.21-06-035, we see no harm in broadening the finding, and therefore have made the requested change.

CalCCA's comments generally support adoption of the decision, appreciating the increase in flexibility that it offers to LSEs. CalCCA also makes a similar point to the above holistic compliance assessment request from AReM. Our changes are consistent with CalCCA's recommendations.

CAISO supports adoption of the proposed decision because it will help meet reliability targets in the near term until longer-term resources come online. CAISO also emphasizes the need for the longer-term replacement resources to meet ongoing reliability and clean energy targets. We agree, though this does not require any changes in the language of the decision.

PG&E's comments seek two changes to the decision. First, PG&E requests that we adopt their prior recommendation to allow unspecified imports paired with RECs to count towards the Diablo Canyon replacement resource category. Shell agrees in reply comments. PG&E chiefly argues that this will likely be the

most affordable option for its customers. PG&E largely repeats the arguments about RPS adjustments that are already discussed in the body of this decision, and ultimately not adopted. PG&E argues that we are not restricted from allowing the REC-paired imports by the terms of D.21-06-035. We agree that we are not restricted, but are choosing to remain consistent in this decision with the prior requirements already laid out in D.21-06-035. Thus, we are not modifying this decision to allow RECs paired with unspecified imports.

GPI's comments support rejecting unspecified imports paired with RECs, because it could create a pathway for the application of unbundled Portfolio Content Category 3 under the RPS program. GPI states that these RECs can be associated with preexisting resources that remain in the baseline and banked RECs exist for RPS-eligible energy that was already delivered, neither of which satisfy a near-term need for capacity that is incremental to the baseline. PCF's comments also state that it is appropriate not to allow unspecified imports paired with RECs, because an RPS adjustment would not change the emissions characteristics of the power provided. CEJA and Sierra Club agree in reply comments, and do not support PG&E's request for flexibility to include RECs paired with unspecified imports.

PG&E's second request is that we specifically allow for contracts with CARB-authorized Asset-Controlling Suppliers (ACSs) to be eligible to be procured under the terms of this decision. PG&E's comments explain that the designated ACSs are typically owners/operators of hydroelectric power in the Northwest that operate their generation systems as a pool, and may not negotiate contracts for specific hydroelectric resources within their fleet. CARB-authorized ACSs under their GHG-reporting system have a specified emissions factor that is non-zero, due to a small number of emitting resources in their fleet. However,

Northwest hydroelectric generation is the type of resource we had in mind when developing the structure of this decision. Therefore, we have made this change requested by PG&E to allow contracts with CARB-authorized ACSs to qualify under the terms of this decision.

Both Cal Advocates and GPI take issue with Finding of Fact 2 in the proposed decision, noting that the only reliability analysis using production cost modeling on the record in this proceeding assumed that Diablo Canyon would fully retire by the end of 2025. They are correct, and we have modified the Finding of Fact accordingly, as well as the text of the decision.

GPI generally does not support the proposed decision. However, if the decision moves forward, GPI also proposes in its comments, as it did in response to the earlier ALJ ruling, that existing zero-emitting and RPS-eligible resources in the D.21-06-035 baseline that have contracts expiring before June 1, 2025, should be eligible to be counted as bridge resources if they are re-contracted for the three-year bridge period. PG&E supports this proposal in its reply comments. We find this a sensible and limited proposal that is in keeping with the overall reliability and compliance purposes of allowing bridge resources in this decision. Therefore, we have added this as an option in the text and the conclusions of this order. As these were resources assumed to remain online in our modeling, the Commission cannot be assured that the retiring resources or resources with expiring contracts will all offer incremental reliability benefits. As a result, re-contracting with resources with expired contracts or retirement dates announced after the baseline was set will not be allowed for general D.21-06-035 compliance for core resources or any other form of bridge resource other than Diablo Canyon replacement bridge resources discussed in this decision. We are making this exception to allow for re-contracting for Diablo Canyon replacement resources

because we recognize the challenges associated with securing the required energy and allowing this exception will support ongoing contracting with RPS-eligible resources.

PCF's comments do not support the proposed decision, and argue that the LSEs have had sufficient notice and time to procure the necessary resources, and thus the Commission should instead enforce existing requirements rather than authorize a bridge mechanism. GPI makes a similar argument. Ultimately, PCF argues that distributed energy resources (DERs), especially demand response, should be prioritized to fill any reliability gap that may exist in 2025 if the LSEs fail to procure the Diablo Canyon replacement resources, because these DERs can be deployed very quickly. While we support DER deployment generally and note that demand response is a resource that can be procured to fill the Diablo Canyon replacement category of resources, we do not find procuring additional DERs here an actionable short-term strategy for the purposes of this decision, since presumably if LSEs could have procured qualifying DERs, they would already be doing so to meet the D.21-06-035 requirements.

## **6. Assignment of Proceeding**

Alice Reynolds is the assigned Commissioner and Julie A. Fitch is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. D.21-06-035 requires all LSEs to acquire specific resources to ensure reliability following the planned closure of Diablo Canyon, including a total of 2,500 MW of zero-emitting capacity, along with an energy component, with new resources required to be online by June 1, 2025.
2. Based on reliability analysis and production cost modeling conducted by Commission staff to inform various decisions, including the PSP portfolio



adopted in D.24-02-047, 2025 is expected to be a tight year from an electric reliability perspective, if Diablo Canyon retires by the end of 2025 and if the Strategic Reliability Reserve units are unavailable.

3. D.24-02-047 rejected a petition for modification of D.21-06-035 filed by PG&E and SCE to delay the deadline for delivery of Diablo Canyon replacement resources by two years.

4. D.24-02-047 stated that the Commission was still open to creative compliance options, given that many LSEs have represented that complying with the Diablo Canyon replacement category of resources in D.21-06-035 has been difficult and could be expensive.

5. The Diablo Canyon Power Plant is now expected to remain online beyond June 1, 2025.

6. The Diablo Canyon Power Plant delayed retirement does not modify D.21-06-035 or relieve LSEs of their compliance obligations under Ordering Paragraph 6 of D.21-06-035.

7. Under CARB Cap-and-Trade Regulations, unspecified imports are defined as contracts where there is no proof of direct delivery from or a contract with a specific generation facility, such that the emissions characteristics cannot be determined.

8. There is no way for Commission staff to verify if capacity resources on the D.21-06-035 Baseline List already had a contract for their energy output prior to this decision being issued.

9. The D.21-06-035 Baseline list contains a total of 596 MW of existing RPS-eligible and zero-emitting resources with planned retirement dates between 2019 and 2025.

### **Conclusions of Law**

1. Allowing short-term bridge contracts for a period of no more than three years for compliance with the Diablo Canyon replacement resource requirements in D.21-06-035 represents the potential for ratepayer cost savings.

2. Allowing short-term bridge contracts for a period of no more than three years for compliance with the Diablo Canyon replacement resource requirements in D.21-06-035 represents the potential for short-term reliability benefits.

3. Short-term bridge contracts used for alternative compliance with D.21-06-035 Ordering Paragraph 6 requirements should be associated with facilities that either have zero on-site emissions, otherwise qualify for the RPS program, or are from a CARB-approved ACS.

4. This decision should not modify the emissions eligibility for Diablo Canyon replacement resources that was set in D.21-06-035.

5. Any submission of a contract for use of the alternative compliance mechanisms outlined in this decision, in any venue, should be accompanied by a description of the long-term Diablo Canyon replacement capacity and/or energy that the LSE is pursuing, along with an explanation for the delay in procuring that capacity and/or energy.

6. This decision should not modify the review and approval process for contracts used in compliance with D.21-06-035.

7. Unspecified imports, as defined in the CARB Cap-and-Trade regulations, should not be eligible to be used as alternative compliance with the Diablo Canyon replacement resource requirements in D.21-06-035.

8. Unspecified imports, paired with RECs that are RPS eligible, should not be eligible to be used for alternative compliance with the Diablo Canyon replacement resource requirements in D.21-06-035.

9. Contracts for energy output from resources that were listed on the Baseline List for D.21-06-035 compliance should not be able to be used for alternative compliance with the Diablo Canyon replacement resource category in D.21-06-035, because there is no way to show incrementality.

10. Contracts with RPS-eligible and/or zero-emitting resources on the Baseline List for D.21-06-035 with planned retirement dates or expiring contracts prior to June 1, 2025 should be eligible to be re-contracted and qualify as bridge resources for a period of not more than three years.

11. The Commission should not adopt PG&E's proposal for exemptions from the D.21-06-035 Diablo Canyon replacement resource category in the event of "last minute" notice of delays from developers.

12. The Commission and staff should assess an LSE's compliance status with respect to the Diablo Canyon replacement resource category in D.21-06-035, as well as for all IRP-related procurement, holistically, including all LSE efforts to procure, taking into account last-minute delay notices from developers.

13. This proceeding should remain open.

## **O R D E R**

**IT IS ORDERED** that:

1. Any load-serving entity with an obligation to provide Diablo Canyon Power Plat replacement resources in compliance with Ordering Paragraph 6 of Decision (D.) 21-06-035 may meet the obligations for a period of no more than three years beyond the compliance deadline of June 1, 2025, if the alternative compliance options meet the following requirements:

- (a) The contract is with a resource that has zero on-site greenhouse gas emissions, is otherwise eligible under the renewables portfolio

standard (RPS) program, or is from a California Air Resources Board-approved Asset Controlling Supplier; or

- (b) The contract is with a zero-emitting or RPS-eligible resource that was on the D.21-06-035 Baseline List and that has a planned retirement date or an expiring contract after 2019 and prior to June 1, 2025; and
- (c) When submitted to the Commission for compliance consideration or other approval, the contract is accompanied by a description of the long-term Diablo Canyon Power Plant replacement capacity and/or energy that is being pursued, along with an explanation for the delay in procuring that capacity and/or energy.

2. If a load-serving entity (LSE) is contracting with a resource that is included in the Baseline List for Decision 21-06-035 that is planned for retirement or has an expiring contract, the LSE shall include in its compliance submission to the Commission a reference to the resource in the baseline, a copy of the proposed contract, and a showing of evidence that the previous contract has expired or that the resource is otherwise scheduled to retire or at risk for retirement.

3. Contracts with unspecified imports, as defined by the California Air Resources Board under its Cap-and-Trade Program Regulations, are not eligible to be used for alternative compliance with the Diablo Canyon Power Plant replacement resource category requirements in Decision 21-06-035, Ordering Paragraph 6.

4. Unspecified imports paired with renewable energy credits that are eligible under the renewables portfolio standard program are not eligible to be used for alternative compliance with the Diablo Canyon Power Plant replacement resource category requirements in Decision 21-06-035, Ordering Paragraph 6.

5. Contracts for the energy output of capacity resources that are listed on the Baseline List accompanying Decision 21-06-035 are not eligible to be shown for alternative compliance with the Diablo Canyon Power Plant replacement resource category requirements in Decision 21-06-035, Ordering Paragraph 6.

6. Any load-serving entity (LSE) may bring forward a Tier 2 advice letter for the Commission's consideration for any other resource not specifically referenced in this decision, where the LSE provides evidence or argument that contracting with the resource is in alignment with the principles laid out in this decision.

7. Rulemaking 20-05-003 remains open.

This order is effective today.

Dated September 12, 2024, at Sacramento, California.

ALICE REYNOLDS

President

DARCIE L. HOUCK

JOHN REYNOLDS

KAREN DOUGLAS

Commissioners

Commissioner Matthew Baker recused himself from this agenda item and was not part of the quorum in its consideration.