APRIL 2020
VOL. 20-4

PRATT'S

ENERGY LAW REPORT

LexisNexis

Pratt's Energy Law Report

VOLUME 20 **NUMBER 4** **April 2020**

LexisNexis®

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the **Editorial Content** appearing in these volumes or reprint permission, please email:

Jacqueline M. Morris at ..... (908) 673-1528
Email: ..... jacqueline.m.morris@lexisnexis.com
Outside the United States and Canada, please call . . . . . (973) 820-2000

For assistance with replacement pages, shipments, billing or other customer service matters, please call:

Customer Services Department at . . . . . (800) 833-9844
Outside the United States and Canada, please call . . . . . (518) 487-3385
Fax Number . . . . . (800) 828-8341
Customer Service Website . . . . . http://www.lexisnexis.com/custserv/

For information on other Matthew Bender publications, please call

Your account manager or . . . . . (800) 223-1940
Outside the United States and Canada, please call . . . . . (937) 247-0293

ISBN: 978-1-6328-0836-3 (print)
ISBN: 978-1-6328-0837-0 (ebook)
ISSN: 2374-3395 (print)
ISSN: 2374-3409 (online)

Cite this publication as:

[author name], [*article title*], [vol. no.] PRATT'S ENERGY LAW REPORT [page number] (LexisNexis A.S. Pratt);

Ian Coles, *Rare Earth Elements: Deep Sea Mining and the Law of the Sea*, 14 PRATT'S ENERGY LAW REPORT 4 (LexisNexis A.S. Pratt)

Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
www.lexisnexis.com

MATTHEW BENDER

(2020–Pub.1898)

Editor-in-Chief, Editor & Board of Editors

Hydraulic Fracturing Developments
Eric Rothenberg
Partner, O'Melveny & Myers LLP

Pratt's Energy Law Report is published 10 times a year by Matthew Bender & Company, Inc. Periodicals Postage Paid at Washington, D.C., and at additional mailing offices. For customer support, please contact LexisNexis Matthew Bender, 1275 Broadway, Albany, NY 12204 or e-mail Customer.Support@lexisnexis.com. Direct any editorial inquiries and send any material for publication to Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 26910 Grand Central Parkway Suite 18R, Floral Park, New York 11005, smeyerowitz@meyerowitzcommunications.com, 646.539.8300. Material for publication is welcomed—articles, decisions, or other items of interest to lawyers and law firms, in-house energy counsel, government lawyers, senior business executives, and anyone interested in energy-related environmental preservation, the laws governing cutting-edge alternative energy technologies, and legal developments affecting traditional and new energy providers. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher.

POSTMASTER: Send address changes to Pratt's Energy Law Report, LexisNexis Matthew Bender, 121 Chanlon Road, North Building, New Providence, NJ 07974.

California Takes Action to Avoid Electricity Shortages and Reliability Challenges

By Monica A. Schwebs, Neeraj Arora, F. Jackson Stoddard, and Levi McAllister*

The California Public Utilities Commission voted unanimously to issue a decision to address anticipated electricity shortages and reliability challenges in California. The authors of this article discuss the decision, which authorizes the procurement of 3,300 MW of energy by 2023, while seeking extensions for almost 4,800 MW of gas generation units due to retire by December 31, 2020. According to the authors, this will result in opportunities for clean energy resources to secure contracts with California load-serving entities.

As part of its Integrated Resource Plan and Long-Term Procurement Plan proceeding[1] ("IRP Proceeding"), the California Public Utilities Commission ("CPUC") voted unanimously to issue a decision, D. 19-11-016[2] (the "Decision") to address anticipated electricity shortages and reliability challenges in California. The CPUC voted to authorize the procurement of 3,300 MW of energy by 2023, while seeking extensions for almost 4,800 MW of gas generation units due to retire by December 31, 2020.

The CPUC's action will result in near-term opportunities for clean energy resources to secure contracts with California load-serving entities ("LSEs"), including investor-owned utilities ("IOUs"), community choice aggregators ("CCAs"), and electric service providers ("ESPs").

This Decision substantially adopts the original proposed decision in this proceeding issued on September 12, 2019, and the revised proposed decision issued on October 21, 2019.

---

* Monica A. Schwebs (monica.schwebs@morganlewis.com), of counsel at Morgan, Lewis & Bockius LLP, represents a variety of clients including developers, financial institutions, utilities, and government agencies in federal and state energy and environmental regulatory matters. Neeraj Arora (neeraj.arora@morganlewis.com) is a partner at the firm focusing on the representation of sponsors and financial institutions in a broad array of project development and finance transactions. F. Jackson Stoddard (fjackson.stoddard@morganlewis.com) is a partner at the firm representing and advising clients on energy regulatory matters and proceedings before state and federal agencies. Levi McAllister (levi.mcallister@morganlewis.com) is a partner at the firm advising clients in the natural gas, petroleum, and electric power sectors of the energy industry.

[1] IRP-LTPP R.16-02-007.

[2] http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M319/K825/319825388.PDF.

Notably, however, the procurement and extension amounts set forth in this Decision are higher than what was included in the initial September decision. The Decision was formally issued on November 13, 2019 and was subject to rehearing for a period of 30 days thereafter, after which it became final and non-appealable.

IMPENDING SHORTAGES AND RELIABILITY CHALLENGES

Under California law, the CPUC develops an Integrated Resource Plan ("IRP") for the utilities subject to its jurisdiction, which it develops in its IRP Proceeding. The Decision is based on an analysis of system needs and party comments presented in the IRP Proceeding.

An analysis by the CPUC staff and the California Independent System Operator ("CAISO") shows that current electricity supplies are tight and that in the near future reliance on imports will be increased beyond historical levels, creating uncertainty in electricity supply until more in-state generation is built. The tight supply is driven by several market trends in the electric sector, including the growing penetration levels of wind and solar resources that require integration into the grid, time of day and time of year shifts of system peak loads, a decline in reliable imported electricity to meet peak demand as other states increase their renewable generation, and the retirement of aging natural gas plants.

The situation is particularly acute for Southern California since several natural-gas-fired power plants along the coast are scheduled to retire soon because they use ocean water for so-called "once-through cooling" ("OTC"), which can have a detrimental impact on marine life.

AMOUNT AND TIMING OF PROCUREMENT AUTHORIZED

To avoid possible electric system reliability problems, the Decision orders LSEs to procure an incremental 3,300 MW of new electricity resources. At least 50 percent of the new resources must be online by August 1, 2021, with 75 percent by August 1, 2022, and the full amount on August 1, 2023. The Decision notes, however, that LSEs are encouraged to exceed these minimum requirements to help minimize or eliminate the need for OTC compliance extensions.

The Decision provides guidance concerning the baseline to be used to determine whether procurement of a new electricity resource will be considered "incremental." As a general matter, the baseline will include the resources assumed for the year 2022 in the CPUC's Preferred System Plan adopted by the CPUC in its IRP Proceeding.

The Decision sets forth the procurement obligations of all of the LSEs. Of particular note, the procurement obligations for the IOUs are:

- SCE: Bundled—1184.7 MW; direct access—140.3 MW;
- PG&E: Bundled—716.9 MW; direct access—114.0 MW;
- SDG&E: Bundled—292.9; direct access—42.7 MW.

Nineteen CCAs have procurement obligations, too. The CCA with the largest procurement obligation is the Clean Power Alliance of Southern California, which has a procurement obligation of 196.9 MW. The full table of procurement requirements is set forth below:

Load-Serving Entity	**Minimum by August 1, 2021 (MW)**	**Minimum by August 1, 2022 (MW)**	**Minimum by August 1, 2023 (MW)**
PG&E (Bundled)	358.5	537.7	716.9
PG&E Direct Access (Aggregated)	57.0	85.5	114.0
Clean Power San Francisco	28.5	42.8	57.0
East Bay Community Energy	49.8	74.7	99.6
King City Community Power	0.3	0.5	0.7
Marin Clean Energy	43.7	65.6	87.5
Monterey Bay Community Power Authority	28.7	43.1	57.4
Peninsula Clean Energy Authority	27.5	41.2	55.0
Pioneer Community Energy	9.2	13.8	18.5
Redwood Coast Energy Authority	5.4	8.0	10.7
San Jose Clean Energy	38.8	58.2	77.6
Silicon Valley Clean Energy	33.6	50.4	67.2
Sonoma Clean Power	21.7	32.5	43.3
Valley Clean Energy Alliance	6.3	9.4	12.6
SCE (Bundled)	592.3	888.5	1,184.7
SCE Direct Access (Aggregated)	70.1	105.2	140.3
Apple Valley Choice Energy	1.9	2.8	3.8

Clean Power Alliance of Southern California	98.4	147.7	196.9
Lancaster Clean Energy	4.7	7.1	9.4
Pico Rivera Innovative Municipal Energy	1.3	2.0	2.6
Rancho Mirage Energy Authority	2.4	3.6	4.8
San Jacinto Power	1.4	2.1	2.8
SDG&E (Bundled)	146.4	219.7	292.9
SDG&E Direct Access (Aggregated)	21.3	32.0	42.7
City of Solana Beach	0.5	0.8	1.1
Total	1,650.0	2,475.0	3,300.0

The Decision allows CCAs and ESPs to self-provide, but recognizes that some will elect not to self-provide. The CPUC requires the CCAs and ESPs that elect not to self-provide to notify the CPUC of their decision in their IRP progress reports that were due February 15, 2020. For those that decide not to self-provide, the IOUs will be required to procure for them. The Decision indicates that that all costs incurred by the IOUs to undertake procurement on behalf of customers of other LSEs will be compensated.

ELIGIBLE RESOURCES

The CPUC expects the LSEs to add incremental clean energy resources, which can help meet the system peak capacity needs. The Decision observes that as system peak capacity has shifted to later in the day, the contribution of solar resources without storage becomes less valuable and the need for other renewable integration resources is more acute. The types of clean energy resources that can address these needs include hybrid solar and storage, standalone storage systems, energy efficiency, and demand response.

The Decision finds that there may be some situations in which procurement contracts with natural-gas-fired generators may be necessary and can be counted toward the procurement target:

- New natural-gas-fired power plants coupled with storage are eligible to count towards the procurement target.
- With respect to *existing* natural-gas-fired power plants, if they have not been counted in the baseline, a new agreement can be counted toward the baseline. In addition, at existing power plants that are in the

baseline, augmentation of capacity, including efficiency improvements or repowering, may also be counted if the additional capacity is incremental to the baseline.

The CPUC's order allows only 20 percent of the total obligations of each LSE to be imported power.

Finally, the CPUC encourages the LSEs to conduct their procurement with an eye toward grid resiliency, in light of the state's recent experience with wildfires and power shutoffs.

PROCUREMENT ACTIVITIES ALREADY UNDERWAY

The Decision specifies that procurement must be conducted on an all-source basis, including both existing and new resources (except new gas-only resources), and may include LSE-owned resources when justified.

The LSEs must make procurement decisions quickly since the Decision specifies that at least 50 percent of the new resources must be online by August 1, 2021. Thus, several LSEs have already begun the procurement process.

For example, in response to the CPUC's issuance of the initial proposed decision authorizing procurement on September 12, 2019, SCE launched an all-source Request for Offers[3] ("RFO") on September 19, 2019.

This solicitation has a fast track, i.e., projects that can be online by August 1, 2021, for which offers were due on November 22, 2019.

There is also a standard track, i.e., for projects that can be online by August 1, 2022, or August 1, 2023, for which indicative offers were due on November 22, 2019, and final offers were due February 7, 2020.

EXTENSIONS OF COMPLIANCE DEADLINES FOR CERTAIN NATURAL-GAS-FIRED POWER PLANTS WITH ONCE-THROUGH COOLING

On May 4, 2010, the State Water Resources Control Board ("Water Board") adopted a policy[4] regulating the use of seawater for cooling purposes at power plants in California. The policy establishes technology-based standards to implement federal Clean Water Act Section 316(b) and reduce the harmful effects associated with cooling water intake structures for power generating facilities on marine and estuarine life. The policy applies to 19 existing power plants. Of these, nine have ceased their OTC operations and the remaining 10 are planning to comply by retiring their existing OTC plants' equipment.

---

[3] https://www.sce.com/procurement/solicitations/system-reliability-rfo.

[4] https://www.waterboards.ca.gov/water_issues/programs/ocean/cwa316/.

In some cases, plants will repower their locations with modern non-water-cooled systems. Most of the coastal power plants that still use OTC and are scheduled to retire or repower are located in Southern California.

In light of the state's electric reliability challenges, the Decision indicates that it will request that the Water Board make schedule adjustments for certain power plants identified by stakeholders as essential to reliable electricity for California between 2021 and 2023.

In particular, the Decision recommends that the Water Board extend the OTC compliance deadlines for the following units currently slated to retire by December 31, 2020, for the time periods specified:

- Alamitos Generating Station, Units 3–5, totaling approximately 1,200 MW, for up to three years;
- Huntington Beach Generating Station, Unit 2, approximately 200 MW, for up to three years;
- Redondo Beach Generating Station, Units 5, 6, and 8, approximately 850 MW, for up to two years; and
- Ormond Beach Generating Station, Units 1 and 2, approximately 1,500 MW, for up to one year.

In addition, the Decision indicates that the CPUC intends to request a temporary extension for the Moss Landing power plant, which is in the process of upgrading to comply with OTC requirements. The CPUC intends to recommend that if the upgrades are not certified by the December 31, 2020, compliance deadline, the plant should still be allowed to operate until the upgrades have been certified by the Water Board.

The Decision makes it clear that the CPUC's recommendation that the compliance deadlines be extended is only a bridge strategy to allow new clean energy capacity to come online and that the CPUC remains committed to compliance with the Water Board's OTC policy. The CPUC has indicated that the OTC units are not a resource the state can continue to rely on going forward and expects the plants will close after the extension periods.

Although the CPUC intends to recommend extensions, the Water Board is not required to grant the extensions. There is likely to be opposition to granting extensions which, in some cases, will come from affected local governments. At this time it is not yet clear which, if any, of the extensions will be granted by the Water Board.

ADDITIONAL NEAR TERM REGULATORY ACTIONS NEEDED TO IMPLEMENT THE DECISION

Some additional regulatory actions will be needed in the near term to implement the Decision:

- The Decision sets up a process for coming up with a final list of the baseline resources to facilitate determining which will be considered incremental: The CPUC Energy Division published a list and requested comments by December 9, 2019. The administrative law judge in the IRP Proceeding will finalize the list.
- The Decision did not provide guidance regarding how hybrid resources (generation resources with storage) are to be counted for resource adequacy purposes. The CPUC indicated that this issue will be addressed in an ongoing CPUC rulemaking relating to the resource adequacy rules.

The Decision is a continued demonstration of the dynamic nature of California's energy future as the state seeks to implement its environmental protection, renewable energy procurement, and greenhouse gas reduction objectives while ensuring safe and reliable electric service for its residents.