BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement Senate Bill 520 and Address Other Matters Related to Provider of Last Resort.	Rulemaking 21-03-011 (Filed March 18, 2021)

COMMENTS OF THE CALIFORNIA ENERGY STORAGE ALLIANCE ON THE ADMINISTRATIVE LAW JUDGE'S RULING DISTRIBUTING WORKSHOP AGENDA AND PROVIDING QUESTIONS FOR ADDITIONAL POST WORKSHOP COMMENTS

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In accordance with the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the California Energy Storage Alliance ("CESA") hereby submits these comments on the *Administrative Law Judge's Ruling Distributing Workshop Agenda and Providing Questions for Additional Post Workshop Comments* ("Ruling"), issued by Administrative Law Judge ("ALJ") Jessica T. Hecht on February 24, 2022.

I. INTRODUCTION AND SUMMARY.

CESA continues to support inquiry and discussion on the questions, issues, and proposed framework as part of Phase 1 of this proceeding. As the Commission and stakeholders are well aware, significant procurement is underway as a result of the mid-term reliability ("MTR") and emergency reliability procurement orders as part of Rulemaking ("R.") 20-05-003 and R.20-11-003. In this context, certainty is needed on the impact to long-term resource contracts, including those for energy storage, under the existing or modified Provider of Last Resort ("POLR") framework, if a community choice aggregator ("CCA") fails to meet their LSE obligations or faces bankruptcy, insolvency, and/or financial troubles. Without certainty in this regard, developers may find risk in developing new projects in California, leading to reduced market participation and/or higher ratepayer costs. To this end, CESA agrees with the presentation by the Solar Energy Industries Association ("SEIA") and Large-Scale Solar Association ("LSA") at the March 7, 2022 workshop that novation or contract reassignment will play a critical and beneficial role in lowering the risk profile of current and potential agreements. Especially in a situation where the state faces tight capacity markets and significant new resource buildout in the coming years and decades, continuity of service and certainty of contract security are tantamount to electric grid reliability.

II. RESPONSES TO QUESTIONS IN RULING.

In this section, CESA selectively responds to key questions, paraphrased for brevity and posed in the Ruling.

Question 3.1.a: Does Energy Division's proposed framework accurately capture the core problem statement and set of issues that need to be addressed in Phase 1? If not, what needs to be changed or considered?

CESA generally agrees with Energy Division's proposed framework as accurately capturing the core problem statement and set of issues that need to be addressed in Phase 1, except that the problem statement focuses on securing the resources needed to serve the returning customers without explicit consideration of how executed contracts with the failing load-serving entity ("LSE") can be reassigned and leveraged to avoid large and/or cascading failures. The current problem statement should be modified to support the continuity of service, fair cost allocation, and overall ratepayer outcomes through fair and reasonable processes that support the stability and certainty of resource procurement contracts.

Question 3.2.a: Should POLR service be for a limited specified period of time, or should the POLR be deemed the default provider with a

limited time period for transition from POLR service to bundled service?

CESA has no comment at this time.

<u>Question 3.2.b</u>: What are the pros and cons of implementing a short-term transition service?

CESA has no comment at this time.

<u>Question 3.2.c</u>: What are the pros and cons of implementing a POLR that is deemed the default provider with a limited time period for transition from POLR service to bundled service?

CESA has no comment at this time.

<u>Question 3.2.d</u>: To the extent that you advocate for POLR to be defined as a short-term service, please provide a detailed description of how the POLR system would operate.

CESA has no position on whether the POLR should be defined as a short-term service, but as the California Community Choice Association ("CalCCA") presented at the March 7, 2022 workshop, there may be legal issues associated with contract reassignment when it comes to consistency with the Bankruptcy Code, particularly around control over contracts and the centralization of assets and claims. Notwithstanding these legal questions to which CESA does not have an informed legal response or analysis, CESA believes that even temporary contract reassignment to the POLR should be strongly considered and explored in this proceeding as a means to ensure continuity of service and certainty of contracts in the short term while recognizing the Bankruptcy Court's jurisdiction and debtor/trustee control of contracts. The POLR could thus provide an important role as a bridge and support greater certainty in projects being procured, contracted, and developed, knowing that there are contingencies in place in case the LSE becomes insolvent and defaults on its contractual obligations.

<u>Question 3.2.e</u>: **Given the wide range of conditions under which customers could be returned to a POLR, what other changes, if any, should be considered to support the POLR in providing service and ensure that a reliable long term provider is available to serve customers through bundled service or other options?**

CESA has no comment at this time.

<u>Question 3.3.a</u>: **What is the liquidity need, if any for the POLR to provide for various levels of return of customers?**

CESA has no comment at this time.

<u>Question 3.3.b</u>: **What options are available to provide sufficient cash flow for a mass transfer of customers to the POLR? What options other than significant cash flow are available to the POLR in the event of a mass transfer of customers?**

CESA has no comment at this time.

<u>Question 3.3.c</u>: **Pacific Gas and Electric Company (PG&E) proposed an insurance pool similar to the plan put together in the Wildfire Proceedings. How would an insurance pool work for purposes of POLR?**

CESA has no comment at this time.

<u>Question 3.3.d</u>: **What other options may be available to provide liquidity, and how would those work?**

CESA has no comment at this time.

<u>Question 3.4.a</u>: **How would novation or "Right of First Refusal" (ROFR) clauses impact LSEs' costs, the risk profile and/or abilities to enter contracts?**

CESA believes that novation or contract reassignment will promote rate certainty, reduce procurement risks and thus ratepayer costs associated with resource procurement contracts, and facilitate the development of adequate power supplies. Absent these mechanisms and contract clauses, resource development risks will be increased due to the potential for rates, terms and conditions of a contract being subject to modification.

Considering financeability is often tied with long-term revenue certainty, the lack of contract reassignment to the POLR will only serve to increase the risk profile of the underlying contract with the LSE and contribute to higher contract costs. This uncertainty for developers of new electric supplies will be particularly harmful for "first movers" in this space, such as for energy storage resources, which are maturing as a market but still in the early stages as an asset class of being procured, contracted, and developed, with the number of such projects becoming operational only recently in the past couple years.

To similar ends, CESA has concerns with proposals to include Right of First Refusal ("ROFR") clauses in procurement contracts, which puts continuity of service at risk and does not offer financiers with much security to move forward with projects. If the POLR can reject contract reassignments via the ROFR clauses, developers and financiers will see higher risk of default and thus increase the cost of financing and capital when developing projects. All in all, required novation or reassignment to the POLR is essential in lowering contract risk and costs. Otherwise, projects in development or under construction may default and fail to come online, or may create gaps in service if they are forced to be renegotiated and resold to the POLR or other LSE rather than being automatically reassigned.

<u>Question 3.4.b</u>: **Would contract reassignment, novation, or ROFR clauses help to maintain continuity of service during a mass return or other extreme conditions, and if so, how? How would they affect the POLR's ability to meet the compliance requirements for returning customers?**

See our response to Question 3.4.a above.

<u>Question 3.4.c</u>: **In what way would contract reassignment, novation, or ROFR clauses affect procurement or related costs to the POLR of serving returned customers?**

See our response to Question 3.4.a above.

<u>Question 3.4.d</u>: **Should non-IOU LSEs be required to carry energy hedges that are transferrable to the POLR in the event of a mass customer return?**

CESA is aware of the higher ratepayer costs associated with overprocurement and hedging a position in the event of an LSE failure event that may not occur. As a result, if contract reassignment is appropriately structured, combined with improved financial monitoring of LSEs, CESA does not believe that such excess procurement is absolutely necessary to mitigate risks of mass customer return, which would only place an additional cost burden on bundled customers.

<u>Question 3.4.e</u>: **Could the existing Capacity Allocation Mechanism (CAM) and Voluntary Allocation and Market Offer (VAMO) resources be used to meet POLR needs, and if so how?**

CESA has no comment at this time.

<u>Question 3.4.f</u>: **If novation/ROFR is not an option, what alternative solutions should be considered to ensure that contracted resources (both under development and operational) are available at a reasonable price? As opposed to direct regulatory requirements, could incentives be created that would encourage ROFR clauses to be included in contracts? If proposing an alternative to contract assignment, please include a detailed description of how the proposed mechanism would operate to ensure adequate resources.**

CESA has no comment at this time.

<u>Question 3.5.b</u>: **The IOUs, CalCCA, and Cal Advocates propose that financial monitoring of CCAs could help identify CCAs with financial problems, facilitating an early response to those problems to help maintain market stability. What benefits would such monitoring provide? What kinds of financial information should CCAs report? Should reports be limited to publicly available information, or should additional confidential reports**

containing confidential information be provided? How should the financial reporting be utilized?

CESA is generally supportive of financial monitoring of CCAs to detect, diagnose, and address financial problems in advanced. Such monitoring and oversight will help ensure healthy and sustainable off-takers, but we emphasize the importance of specifying contract assignment to the POLR in resource procurement contracts, which cannot be obviated through heightened financial monitoring alone.

<u>Question 3.5.c</u>: UCAN argues that some sort of regular and/or trigger-induced financial reporting should be required from LSEs to monitor potential failure. Should reporting requirements be established based on specific triggers, and if so, what triggers?

CESA has no comment at this time.

<u>Question 3.5.d</u>: CalCCA proposes that the financial reporting requirements should occur through upgraded requirements to the implementation plans. What if any critical financial or other standards should a CCA be required to meet during the Implementation Phase, as a condition of receiving approval to begin serving customers? Would financial reporting requirements in implementation plans be established for the Implementation Phase of new CCAs only, or for all CCAs?

CESA has no comment at this time.

III. <u>CONCLUSION</u>.

CESA appreciates the opportunity to these comments on the workshop and Ruling and looks forward to working with the Commission and other stakeholders in this proceeding.

Respectfully submitted,

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