BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Pursuant to Assembly Bill 2514 to Consider the Adoption of Procurement Targets for Viable and Cost-Effective Energy Storage Systems	R.10-12-007 (Filed December 16, 2010)

COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS, SAM'S WEST, INC. AND WALMART STORES, INC. ON PROPOSED DECISION

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September 23, 2013

TABLE OF CONTENTS

SUBJECT INDEX
TABLE OF AUTHORITIES

I. THE PD APPROPRIATELY SETS ENERGY STORAGE PROCUREMENT TARGETS FOR *ALL* LSES RATHER THAN ALLOWING "ON BEHALF OF" PROCUREMENT BY THE IOUS. 2

II. THE PD APPROPRIATELY SETS FLEXIBLE TARGETS FOR ESPS. 3

III. THE PD SHOULD BE MODIFIED TO ALLOW ESPS AND CCAS TO REQUEST DEFERRAL IF VIABLE AND COST-EFFECTIVE ENERGY STORAGE CANNOT BE PROCURED. 3

IV. THE PD SHOULD BE MODIFIED TO ENSURE THAT THE CAPACITY OF IOU-PROCURED ENERGY STORAGE PROJECTS THAT IS PAID FOR BY *ALL* CUSTOMERS IS APPROPRIATELY ALLOCATED TO ESPS AND CCAS 5

V. THE PD SHOULD BE MODIFIED TO ALLOW ESPS' COMPLIANCE FILINGS FOR ENERGY STORAGE TO BE TIER 2 ADVICE LETTERS. 8

VI. THE PD SHOULD BE MODIFIED TO INCORPORATE SEVERAL ADDITIONAL CLARIFICATIONS AND CORRECTIONS TO ENSURE PROPER IMPLEMENTATION. 9

VII. CONCLUSION. 11

APPENDIX – REQUESTED MODIFICATIONS TO PROPOSED DECISION

SUBJECT INDEX

1. The Proposed Decision ("PD") appropriately sets energy storage procurement targets for all LSEs and avoids establishing new non-bypassable charges for customers of electric service providers ("ESPs") and community choice aggregators ("CCAs").
2. The PD provides appropriate flexibility to ESPs and CCAs in meeting their respective procurement targets.
3. The PD should be revised to provide ESPs and CCAs a mechanism to secure deferral of meeting procurement targets beyond 2020 if viable and cost-effective energy storage cannot be procured.
4. The PD should be revised to ensure that the capacity of energy storage projects paid for by *all* customers is appropriately allocated to ESPs and CCAs to avoid the situation in which the customers of ESPs and CCAs pay twice to meet energy storage procurement targets.
5. The PD should be revised to permit ESPs to submit Tier 2 advice letters to show progress in meeting the procurement targets.
6. The PD should be revised to correct errors or provide clarifications, as noted herein, including specifying that an ESP's compliance filing is subject to protection under the Commission's confidentiality rules.

TABLE OF AUTHORITIES

State Statutes, Codes, Regulations

Assembly Bill 2514 ..... 2, 4, 10
Public Utilities Code Section 2836.2(d) 4
Public Utilities Code Section 2836.6 4
Public Utilities Code Section 2836(a) 4
Public Utilities Code Section 2836(a)(1) 4, 10
Public Utilities Code Section 2836(a)(1). 3
Public Utilities Code Section 394 (f) 9

CPUC Decisions, Dockets, Rules

Decision 06-06-066 10
Decision 07-01-039 8
Decision 12-05-037 ..... 6, 7
General Order 96-B 8

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COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS, SAM'S WEST, INC. AND WALMART STORES, INC. ON PROPOSED DECISION

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Alliance for Retail Energy Markets [1] ("AReM"), Sam's West, Inc. and Walmart Stores, Inc. [2] (jointly referred to herein as "Direct Access Parties") submit these comments on the Proposed Decision ("PD") of Commissioner Carla J. Peterman, *Decision Adopting Energy Storage Procurement Framework and Design Program*, which was issued September 3, 2013. The PD establishes energy storage procurement targets for the investor-owned utilities ("IOUs") and other load-serving entities ("LSEs"), including electric service providers ("ESPs") and Community Choice Aggregators ("CCAs"). The Direct Access Parties represent both ESPs, which are subject to the proposed procurement targets, and a major direct access customer, which actively manages electricity costs and deploys significant renewable energy and energy efficiency at its facilities.

[1] The Alliance for Retail Energy Markets is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California's direct access market. This filing represents the position of AReM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

[2] Walmart has both bundled and direct access load in California. Walmart plans to procure 7 billion kWh of renewable energy globally by December 31, 2020 (an increase of over 600 percent versus 2010) and will accelerate energy efficiency with a goal to reduce the kWh/sq. ft. energy intensity required to power its buildings around the world by 20 percent compared to 2010.

The Direct Access Parties support the economic deployment of innovative and cost-effective technologies to improve flexibility and management of the grid and provide additional tools by which energy consumers can effectively manage their own energy usage and operations. Thus, the Direct Access Parties support the PD's determination that energy storage procurement targets will apply to *all* LSEs, and that the IOUs will not be allowed to procure energy storage on behalf of other LSEs, recovering the costs through the cost allocation mechanism ("CAM") or other non-bypassable charges, as had originally been contemplated in Commissioner Peterman's June 10, 2013 Ruling ("June 10th Ruling").[3]

While generally supportive of the PD as noted in Sections I and II below, the Direct Access Parties respectfully request modifications to the PD to ensure proper implementation of the decision, as described in Section III through VI below.

I. THE PD APPROPRIATELY SETS ENERGY STORAGE PROCUREMENT TARGETS FOR *ALL* LSES RATHER THAN ALLOWING "ON BEHALF OF" PROCUREMENT BY THE IOUS.

As the PD correctly notes, Assembly Bill ("AB") 2514 "applies to all" LSEs [4] and the PD gets it right in setting procurement targets for *all* LSEs, thus eliminating the potential for ESP and CCA customers to have to pay for energy storage procurement. As the Direct Access Parties explained in their comments on the June 10th Ruling, AB 2514 includes no provision for procurement by the IOUs *on behalf of* other LSEs.[5] Instead, the statute is clear that the Commission is to establish "appropriate targets, if any, for ***each load-serving entity to procure***

[3] *Assigned Commissioner's Ruling Proposing Storage Procurement Targets and Mechanisms and Noticing All-Party Meeting* ("Ruling"), R.10-12-007, June 10, 2013, p. 15.
[4] PD, Finding of Fact No. 14, p. 65
[5] *Comments of the Alliance for Retail Energy Markets, Sam's West, Inc., and Walmart Stores, Inc. on Ruling Proposing Procurement* Targets, R.10-12-007, July 3, 2013, pp. 5-6.

viable and cost-effective energy storage systems." (emphasis added) [6] Thus, the Legislature intended that procurement targets are to be established for each of the LSEs. The Direct Access Parties therefore support the PD's determination that all load-serving entities are subject to procurement targets. In taking that action, the PD successfully avoids the issues associated with IOU procurement on behalf of other LSEs, including the questionable application of the CAM to such procurement as had been suggested in the June 10th Ruling.[7]

II. THE PD APPROPRIATELY SETS FLEXIBLE TARGETS FOR ESPS.

The Direct Access Parties support the PD's determination to provide needed flexibility to ESPs in meeting their procurement targets by setting a target to be met by 2020 and allowing procurement in "any configuration or use-category they choose" that is "relevant" to the ESPs' "customer base and responsibilities." [8] As the Direct Access Parties explained in comments on the June 10th Ruling, ESPs will be working closely with their customers to identify the most cost-effective storage projects available and will likely rely, to at least some extent, on their customers' sites to provide locations for such systems. [9] The PD provides ESPs the flexibility they need to work hand-in-hand with their customers to identify and deploy the most useful and cost-effective systems.

III. THE PD SHOULD BE MODIFIED TO ALLOW ESPS AND CCAS TO REQUEST DEFERRAL IF VIABLE AND COST-EFFECTIVE ENERGY STORAGE CANNOT BE PROCURED.

While the Direct Access Parties support the flexibility provided to ESPs (and CCAs) in meeting the energy storage procurement targets, the PD also specifies that the IOUs may be

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[6] Public Utilities Code Section 2836(a)(1).
[7] June 10th Ruling, *loc. cit.*, p. 15.
[8] PD, p. 43.
[9] Direct Access Parties' Comments on June 10th Ruling, *loc. cit.*, pp. 8-9.

permitted to defer their targets beyond 2020 – which is an option not afforded to the ESPs or CCAs.[10] This oversight is not consistent with the underlying legislation. Specifically, AB 2514 gives the Commission authority over whether and how to implement procurement targets for LSEs,[11] AND requires the procurement by the LSEs to be "viable and cost effective." [12] Rather than set cost caps on the IOUs' procurement or pre-determine cost-effectiveness,[13] the PD allows the IOUs to request deferment of up to 80 percent of their procurement targets to a later year. [14] Moreover, the PD also states that the Commission "will consider whether the target date to achieve the MW goals should be expanded past 2020." [15] The PD should be clarified to specify that the Commission will consider, as necessary, extending the 2020 deadline for ESPs and CCAs as well.

ESPs and their customers are justifiably concerned about both the "viability" and "cost-effectiveness" of energy storage. As the Direct Access Parties have previously noted, [16] ESPs will likely rely to some extent on their customers' sites to provide locations for energy storage systems and on their customers to utilize the systems as part of their energy management options. By constrast, the IOUs will have significantly more inherent flexibility in that they will have more sites to work with (*i.e.,* transmission or distribution substations, existing generation sites, as

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[10] PD, p. 40.
[11] Public Utilities Code Section 2836(a).
[12] See: (1) Public Utilities Code Section 2836.2(d) . "[T]he commission shall do all of the following: … (d) Ensure that the energy storage system procurement targets and policies that are established are technologically viable and cost effective."; and (2) Public Utilities Code Section 2836(a)(1): "On or before March 1, 2012, the commission shall open a proceeding to determine appropriate targets, if any, for each load-serving entity to procure viable and cost-effective energy storage systems to be achieved by December 31, 2015, and December 31, 2020. …" In addition, see, Public Utilities Code Section 2836.6: "All procurement of energy storage systems by a load -serving entity or local publicly owned electric utility shall be cost effective."
[13] PD, p. 59.
[14] PD, pp. 59-60.
[15] PD, p. 40.
[16] Direct Access Parties' Comments on June 10th Ruling, *loc. cit.*, pp. 9-10.

well as retail customer's facilities), such that it may be more difficult for ESPs to identify and obtain sites for storage facilities. In addition, it is unknown whether the market for these resources will develop and be competitive, or whether prices will remain so far above alternatives to storage that such investments are not viable. If an ESP is unable to procure viable and cost-effective energy storage systems to meet its compliance target, that ESP should have the option to provide a showing to the Commission that it is unable to meet its designated energy procurement target despite its best efforts and to request relief from the Commission.

Accordingly, the Direct Access Parties request that the PD be modified to allow ESPs or CCAs to request deferrals if viable and cost-effective energy storage cannot be obtained in time to meet their 2020 targets. As shown in the attached Appendix, the Direct Access Parties propose adding deferral language for the ESPs and CCAs to Section 4.8.3 of the PD [17] that mirrors the deferral language applying to the IOUs in Section 4.7.3.[18]

IV. THE PD SHOULD BE MODIFIED TO ENSURE THAT THE CAPACITY OF IOU-PROCURED ENERGY STORAGE PROJECTS THAT IS PAID FOR BY *ALL* CUSTOMERS IS APPROPRIATELY ALLOCATED TO ESPS AND CCAS

The PD determines that specific energy storage projects already approved by the Commission for development by the IOUs should "count" toward meeting the respective IOU's procurement target.[19] In addition, the PD directs that two projects underway by Pacific Gas and Electric Company, as well as PIER- and EPIC-funded projects should also "count" if certain conditions are met. [20] The Direct Access Parties do not oppose "counting" these projects as meeting the energy storage procurement targets, but do oppose counting these projects, which

[17] PD, p. 44.
[18] PD, p. 40.
[19] PD, p. 31. The specific projects are listed or otherwise discussed in the PD in Section 4.5.1 on pp. 27 - 29 and 31.
[20] PD, pp. 31-32.

are paid for by all customers, solely to meet the ***IOUs*** procurement targets. This approach is discriminatory and anti-competitive and the PD should be modified to rectify it.

As pointed out by the Direct Access Parties and other parties, most, if not all, of these particular projects have been funded by all ratepayers, including ESP and CCA customers, through non-bypassable charges, either in Distribution rates or through the separate EPIC. [21] Thus, the MW amount associated with the energy storage project should not "count" solely against the IOU's target, because to do so would mean that the customers of the ESPs and CCAs would unfairly subsidize the IOU's procurement. In essence, the customers of the ESPs and CCAs would pay twice, because they would be paying both the IOUs' energy storage procurement, and also the ESPs/CCAs who serve them for meeting their separate energy storage procurement targets. In other words, these retail customers would pay once to the ESP or CCA that is providing the service they want and a second time for the IOU procurement that they do not want – a blatantly unfair approach that competitively *advantages* the IOUs to the detriment of the retail choice market. This approach is both discriminatory and anti-competitive.

In fact, the Commission previously noted competitive concerns about using EPIC funding, which is paid for by all customers, for projects that solely advantage the IOUs. In Decision ("D.") 12-05-037, the Commission prohibited the IOUs from using EPIC funds solely for their own benefit:

> The prohibition was designed to address two separate competitiveness concerns. The first is the one identified by [Marin Energy Authority], where because EPIC funds are being collected from utility distribution rates paid by all customers regardless of electric retail provider, the ***funds should not be used to advantage only IOU development of generation options***, without allowing similar

[21] See discussion of this issue in: *Reply of the Alliance for Retail Energy Markets, Sam's West, Inc., and Walmart Stores, Inc. to Comments on Ruling Proposing Procurement* Targets, R.10-12-007, July 19, 2013, pp. 4-5.

> opportunities for other retail providers on behalf of their customers, since all customers contribute to the funds. (emphasis added)[22]

The PD, if left unchanged, would have the same effect – providing a competitive advantage to the IOUs by allowing them to "count" toward their individual energy storage goals projects that are being partially paid for by the customers of the ESPs and CCAs.

To remedy this inequitable, anti-competitive, and discriminatory outcome, the associated MW capacity values of any such projects deemed by the Commission to "count" must be allocated to all LSEs to meet their respective energy storage procurement targets, similar to the manner in which a proportional share of the Resource Adequacy ("RA") capacity for IOU projects procured and paid for by all customers is allocated to the ESPs and CCAs that serve those customers. These include IOU projects paid for by customers through Distribution rates (*e.g.* certain demand response projects) and the CAM. A similar approach is required here. Each LSE with load in an IOU's service territory should receive a proportional share of the MW capacity value of any energy storage project paid for by all customers and be allowed to "count" that MW capacity amount toward meeting its own energy storage procurement target. Energy Division should be directed to make the appropriate allocations in a timely fashion. In the attached Appendix, the Direct Access Parties provide suggested modifications to Section 4.5.3 of the PD to ensure fair and non-discriminatory implementation of energy storage procurement targets for *all* LSEs.

[22] D.12-05-037, pp. 41-42.

V. THE PD SHOULD BE MODIFIED TO ALLOW ESPS' COMPLIANCE FILINGS FOR ENERGY STORAGE TO BE TIER 2 ADVICE LETTERS.

The PD requires ESPs and CCAs to "demonstrate their compliance" with the energy storage procurement targets by submitting Tier 3 advice letters. [23] AReM members are certainly willing to demonstrate compliance with the decision, but believe that requiring Tier 3 advice letters is unnecessary, inconsistent with similar compliance requirements, and wasteful of Commission and ESP resources. Tier 3 advice letters require drafting and approval of resolutions by the Commission, an often lengthy and time-consuming process. [24] Because ESPs compliance filings are intended to demonstrate progress toward meeting the energy storage procurement targets, their filings are appropriate for *Tier 2* advice letters, which simply require review by Staff to ensure compliance with the applicable.

In fact, ESPs already submit an annual *Tier 2* compliance filing to attest as to whether they are in compliance with the greenhouse gas ("GHG") Emissions Performance Standard pursuant to D.07-01-039. Moreover, when the Commission first implemented its RA procurement obligations for LSEs, the Commission required ESPs to submit their annual compliance showings through *Tier* 2 Advice Letters. The RA advice letter filings have now been replaced by another, more efficient approach, but it demonstrates that the Commission has typically employed the *Tier2* approach for similar compliance filings. AReM is not aware of any Tier 3 advice letters currently required of ESPs.

While the PD requires the IOUs to submit Tier 3 advice letters, this different regulatory approach is justified by the fact that the Commission must *approve* the IOUs' procurement contracts, but has no such authority over procurement by the ESPs. Specifically, Public Utilities

[23] PD, pp. 2 and 44, and Ordering Paragraph No. 5, p. 69.
[24] See, General Order 96-B, Energy Industry Rules, p. 2, Industry Rule 5: Tier Classifications for Advice Letters: "… a Tier 3 advice letter is subject to disposition under General Rule 7.6.2."

Code Section 394 (f) prohibits the Commission from regulating the rates or terms or conditions of service offered by ESPs.

Accordingly, the Direct Access Parties respectfully request that the PD and Ordering Paragraph No. 5 be modified to specify that ESPs and CCAs are to submit *Tier 2* advice letters to demonstrate progress toward meeting their respective energy storage procurement targets, as shown in the attached Appendix.

VI. THE PD SHOULD BE MODIFIED TO INCORPORATE SEVERAL ADDITIONAL CLARIFICATIONS AND CORRECTIONS TO ENSURE PROPER IMPLEMENTATION.

The Direct Access Parties have identified several additional clarifications and corrections to the PD that are required to ensure proper implementation of the decision, as discussed below.

a. 2020 Compliance Date for ESPs – The discussion of the ESPs' energy storage procurement targets in Section 4.8.3 of the PD and in Ordering Paragraph No. 5 each specify that ESPs are required to comply by 2020[25] with the facilities installed and operational by 2024. [26] However, the summary in Section 1 of the PD states that ESPs are required to comply by *2016*.[27] The Direct Access Parties assume this is an inadvertent error and respectfully request that the summary be corrected as shown in the attached Appendix.

b. "Targets" versus "Requirements" – The PD describes the energy storage procurement targets of the IOUs as "targets," but at times describes the

[25] PD, pp. 43, 44 and 69.
[26] PD, p. 44
[27] PD, p. 2.

procurement targets of the ESPs and CCAs as "requirements." [28] The Direct Access Parties note that AB 2514, which this decision is implementing, provides that the Commission is "to determine appropriate *targets*, if any, for *each load-serving entity*" (emphasis added). [29] The Direct Access Parties are concerned that the PD's use of different terms for procurement targets of the IOUs versus the other LSEs may lead to inconsistencies in its implementation, which would ultimately be inconsistent with the statute. Therefore, The Direct Access Parties request that the PD be modified, as shown in the attached Appendix, to refer to the energy storage procurement targets for *all* LSEs as "*targets*" to ensure consistency with AB 2514.

c. Confidentiality of Compliance Submittals – The Direct Access Parties agree and support the PD's determination that the "confidentiality of procurement data should be subject to the confidentiality requirements contained in D.06-06-066." [30] The PD also specifies that the bids received by the IOUs through their energy storage solicitations are subject to confidentiality rules. [31] However, the PD is silent regarding application of confidentiality rules to the compliance filings submitted by the ESPs. The Direct Access Parties assume this omission is inadvertent and requests that the PD be revised to clarify that compliance filings submitted by the ESPs are also subject to the prevailing confidentiality rules, as shown in the attached Appendix.

[28] As to ESPs and IOUs, see, PD, Section 1, no. 1, p. 2. As to ESPs, see, p. 43, 44, and Conclusion of Law No. 23, p. 67. As to IOUs, see, for example, PD, p. 31, and PD, Appendix A, pp. 1-2, pp. 7-8.
[29] See, Public Utilities Code Section 2836(a)(1), which was implemented by AB 2514.
[30] Conclusion of Law No. 33, p. 68.
[31] PD, Appendix A, Section 3(i), p. 9.

VII. CONCLUSION.

The Direct Access Parties appreciate the Commission's efforts and responsiveness in this proceeding thus far. As discussed herein, the Direct Access Parties are generally supportive of the PD, but respectfully request certain revisions and clarifications provided in the attached Appendix to ensure proper implementation of the decision. The Direct Access Parties look forward to working with the Commission to implement this decision once approved.

Respectfully submitted,

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July 3, 2013 **WALMART STORES, INC.**
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September 23, 2013

APPENDIX

REQUESTED MODIFICATIONS TO PROPOSED DECISION

BODY OF PROPOSED DECISION, SECTION 1, PAGE 2:

This decision establishes the policies and mechanisms for procurement of electric energy storage pursuant to Assembly Bill 2514 (Pub. Util. Code § 2836 *et seq.*). The Energy Storage Procurement Framework and Design Program, which can be found in Appendix A of this decision, establishes the program for procurement of energy storage and includes:

1. Procurement targets for each of the investor-owned utilities and ~~procurement requirements for~~ other load serving entities;

...

This decision further determines that community choice aggregators **and electric service providers** shall procure energy storage equal to 1 percent of their annual peak load by 2020 ~~and that electric service providers shall procure energy storage equal to 1 percent of their annual peak load by 2016~~. Starting on January 1, 2016, and every two years thereafter, community choice aggregators and electric service providers shall file a Tier **2** ~~3~~ Advice Letter demonstrating their compliance with this requirement.

BODY OF PROPOSED DECISION, SECTION 4.5.3, PAGE 31:

Based on the definitions accepted under use cases and Section 2835(a), we find that all of the storage projects identified in Section 4.5.1 above should count towards the **applicable LSEs'** ~~IOUs'~~ procurement targets. In addition to these projects, we agree with PG&E that the Vaca-Dixon Battery Project and the Yerba Buena Battery Project should count towards PG&E's

procurement targets once they have reached commercial operation and meet the requirements below. **To the extent any such projects are funded by all customers in an IOU's service territory through transmission and distribution rates or other non-bypassable charges, a proportional MW share of each such project shall be allocated to the ESPs and CCAs serving load therein and count towards meeting their respective energy storage procurement targets. Energy Division is directed to make the appropriate allocations in a timely fashion.**

BODY OF PROPOSED DECISION, SECTION 4.8.3, PAGE 43:

We agree that ESPs and CCAs should be required to purchase energy storage projects commensurate with their load share. However, rather than set interim targets allocated among the storage grid domains, as we have done for the IOUs, we will make a simpler **target** ~~requirement~~ for ESPs and CCAs for this program. We will **set a target for** ~~require~~ ESPs and CCAs to procure energy storage commensurate with 1% of their annual peak load by 2020. They may choose to …

BODY OF PROPOSED DECISION, SECTION 4.8.3, PAGE 44 (footnote omitted):

The ESPs and CCAs shall demonstrate their compliance with this **target** ~~requirement~~ through the filing of a Tier **2** ~~3~~ Advice Letter which shall list the energy storage procurement contracts they have entered into (including technology and number of MW and MWh), duration of the contracts, and the percentage of the ESP/CCA's peak load provided by energy storage. **If an ESP or CCA can demonstrate to the Commission that it has not received bids or proposals that are economically or operationally viable or cost-effective for its customers, that ESP/CCA may request Commission approval to defer its procurement target beyond**

2020 by making a showing to the Commission that such relief is appropriate.

Although we do not require ESPs and CCAs to meet this procurement target until 2020, we do not want them to delay procurement until that time. Therefore, ESPs and CCAs shall file the Tier **2** ~~3~~ Advice Letters starting January 1, 2016, and every two years thereafter. This will allow us to assess the progress of ESPs and CCAs towards meeting their procurement target.

While we **have set targets for the** ~~require~~ ESPs and CCAs to procure energy storage equal to 1 percent of their annual peak load by 2020 with the projects online and delivering no later than the end of 2024, we remind them that, consistent with our prior decisions, departing load customers remain responsible for any costs associated with energy storage procured on their behalf at the time they were bundled service customers. These costs (and the associated load), however, shall not be counted towards meeting the CCA or ESP's 1 percent procurement target.

CONCLUSION OF LAW NO. 23, PAGE 67:

23. ESPs and CCAs should ~~be required~~ **have targets** to purchase energy storage projects equal to 1% of their annual peak load **by 2020 unless a deferral is granted**.

ORDERING PARAGRAPH NO. 5, PAGE 69:

5. Community Choice Aggregators and Electric Service Providers shall file a Tier **2** ~~3~~ Advice Letter starting January 1, 2016 and every two years thereafter to report their progress in procuring up to 1% of their annual peak load from energy storage projects **by 2020**.

APPENDIX A, SECTION 2(b), PAGE 2:

Electric service providers (ESPs) and community choice aggregators (CCAs) shall **meet a target to** procure 1 percent of their annual peak load by 2020 **unless a deferral is granted**.

Starting on January 1, 2016, and every two years thereafter, each ESP and CCA shall to file a Tier **2** ~~3~~ Advice Letter which shall list the energy storage procurement contracts they have entered into (including technology and number of MW & MWh), duration of the contracts, and the percentage of the ESP/CCA's peak load provided by energy storage. **All submitted data shall be handled in a manner consistent with D.06-06-066 or any subsequent applicable Commission decision on the confidentiality of procurement data. However, all information that is afforded confidential treatment shall become public three years after the date it is submitted to the Commission, unless an earlier date is specified.**

APPENDIX A, SECTION 2(d), PAGE 3:

Any storage project listed in the decision, subject to the requirements described there, or procured pursuant to Commission authorizations in other proceedings may be counted toward **the applicable Load-Serving Entities'** ~~each utility's~~ procurement targets starting one year after the project is operational.