



September 9, 2024

VIA E-MAIL

Electric Safety and Reliability Branch
Safety and Enforcement Division
California Public Utilities Commission
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RE: RCRC Comments on the Electric Safety and Reliability Branch's (Workshop III) Staff Proposal to Revise General Order 167-B Pursuant to Senate Bill 1383

I. Introduction

The Rural County Representatives of California (RCRC) is pleased to provide these comments on the California Public Utilities Commission's (CPUC) proposed revisions to General Order 167-B pursuant to Senate Bill 1383 (Chapter 725, Statutes of 2022). Our comments address the proposed revisions released in conjunction with Workshop III, which was held on August 23, 2024. At the workshop, stakeholders were invited to provide comments on the proposed changes by e-mail.

RCRC is an association of forty rural California counties and the RCRC Board of Directors is comprised of elected supervisors from each of those counties. RCRC supports the thoughtful deployment of battery storage systems and acknowledges the core function they play in augmenting the intermittent nature of renewable energy generation and increasing state and local energy resilience. RCRC appreciates the CPUC's actions to revise General Order 167-B's maintenance and operation standards in accordance with SB 1383. That bill requires the CPUC to develop standards for the maintenance and operation of energy storage facilities.

Despite the best intentions, construction standards, and programming, battery energy storage system (BESS) facilities have and continue to catch fire. This is particularly alarming given the proportion of the state that is not only at an elevated fire risk and where winds may fan flames to surrounding vegetation, but also where these facilities will likely be located. For these reasons, it is imperative that permitting and regulatory agencies work carefully to minimize and mitigate the risk of emergencies and plan for contingencies when energy storage systems malfunction.

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RCRC acknowledges that BESS facilities have different permitting pathways. BESS facilities are traditionally permitted through local permit processes; however, Assembly Bill 205 (Chapter 61, Statutes of 2022) allowed developers of BESS facilities capable of storing 200 megawatt hours or more of electrical energy to opt-in to a new permitting process at the California Energy Commission (CEC) in lieu of local permitting. BESS facilities owned and operated by investor-owned utilities regulated by the CPUC follow a very different permitting route that sidesteps discretionary permitting by the local government in which the facility is located.

Regardless of the owner or operator of the facility (or the permit pathway employed), residents are increasingly voicing concerns over the safety of BESS facilities located in their communities. While local governments have regulatory authority over many BESS facilities, developers that utilize the CEC or CPUC pathways cannot ignore community safety concerns, as the natural consequence will be even greater local resistance to those projects that seek to go through the conventional local permitting process. Indeed, communities may become even more frustrated about inadequate CEC or CPUC BESS safety measures particularly because the host community is removed from the traditional processes intended to protect health, safety, and the environment. For this reason, it is important that revisions to GO 167-B adequately safeguard public health and safety and build upon the minimum state and national construction, siting, setback, and operating standards.

Many community concerns can be addressed through increased collaboration with local emergency responders and host jurisdictions. SB 1383 and its corollary, SB 38 (Chapter 377, Statutes of 2023) help address some community concerns through updating the CPUC's General Order 167-B and requiring BESS facilities to have an emergency response and action plan developed in coordination with local agencies.

II. Summary of Suggested Changes to Workshop III GO 167-B Revisions

While RCRC appreciates the CPUC's suggested revisions to GO 167-B, we believe that several changes are necessary to better accomplish SB 1383's goals, protect public and community safety, and preserve trust in the safe operation of community-based BESS facilities. In particular, RCRC suggests the following modifications to proposed revisions associated with Workshop III:

- The Emergency Response and Emergency Action Plan should establish notification and communication procedures between the BESS and the city or county in which the facility is located, not just the local emergency management agency.
- The Emergency Response and Emergency Action Plan should not merely consider responses to potential offsite impacts, but should also incorporate features to mitigate against potential offsite impacts.
- The Emergency Response and Emergency Action Plan must also consider responses to, and mitigation of, wildfire risk.
- Rather than require the Emergency Response and Emergency Action Plan to include procedures for the local emergency response agency to establish shelter-in-place orders and road closure notifications (which impermissibly constrains local

authority to protect public health and safety), the Plan and should instead require the developer to develop strategies and plans in consultation with the local emergency response agency for situations in which those orders and notifications may be issued.

III. The Emergency Response and Emergency Action Plan should establish notification and communication procedures between the BESS and the city or county in which the facility is located, not just the local emergency management agency

As drafted, Section 2.4.3. requires the BESS emergency response and emergency action plan (Plan) to establish notification and communication procedures between the BESS facility and the local emergency management agencies (EMA). It should be noted that the structural relationships between the local EMA and local government will vary significantly from jurisdiction to jurisdiction. For this reason, we have consistently recommended to the CPUC that Public Safety Power Shutoff (PSPS) and Fast Trip outage notifications should be provided to both the local EMA and to the city or county government in which the facility is located. There are few ways in which to more quickly erode community trust than for the local government and elected officials to first learn about potentially major public safety risks on the news or from unofficial channels. To address this, we suggest the following modifications:

*2.4.3. Establish notification and communication procedures between the battery energy storage facility and local emergency management agencies **and the city or county government in which the facility is located.***

IV. The Emergency Response and Emergency Action Plan should not merely consider responses to potential offsite impacts, but should also incorporate features to mitigate against potential offsite impacts. Additionally, the Emergency Response and Emergency Action Plan must also consider responses to and mitigation of wildfire risk

Sections 2.4.4 and 2.4.4.1 *allows* the Plan to “consider responses to potential offsite impacts, including, but not limited to, poor air quality, threats to municipal water supplies, water runoff, and threats to natural waterways.” These sections must be revised to make consideration mandatory rather than discretionary, require mitigation of listed impacts, and specifically require consideration and mitigation of wildfire risk.

First, by merely allowing the Plan to consider responses to offsite impacts, there is no requirement that the BESS facility plan actually mention, consider, or plan for potential impacts to surrounding properties or the community during an emergency. Failure to undertake these basic functions undermines the core utility of an Emergency Response and Emergency Action Plan. To avoid this risk, General Order 167 should require, rather than simply authorize, the plan to consider these offsite risks.

Second, while we appreciate that inclusion of the phrase “including, but not limited to” means this is no longer an exhaustive list of offsite impacts that must be

considered, there is one major glaring omission that must be included: wildfire risk. Much of California is categorized as being in a moderate, high, or very high fire hazard severity zone. One of the most significant risks associated with BESS facilities is the risk of fire, which cannot be quickly or easily addressed by conventional firefighting methods. In many cases, the standard practice has been to let a battery fire burn for several hours until it extinguishes on its own. This risk, the impracticability of conventional firefighting approaches, and the prevalence of windy conditions that can potentially fan flames onto nearby properties makes it imperative that BESS facility Plans be required to take wildfire risk into consideration.

Section 2.4.4.1 merely requires the BESS facility Plan to consider responses to a variety of potential offsite impacts. The seriousness of the risks and gravity of potential consequences means that it isn't enough to simply consider how to respond to potential offsite impacts. The Plan must proactively consider how to mitigate those impacts. Risk mitigation at the outset will significantly reduce the need to actually respond to offsite impacts. Failure to consider risk mitigation in the BESS facility Plan could have profound, costly, and deadly consequences

Finally, IOU's have asserted that local governments are preempted when it comes to siting their BESS facilities. If the host local agencies are precluded from siting and permitting BESS facilities, it is even more important that the CPUC ensure that it and General Order 167 do everything possible to protect public health, safety, and the environment. There have been too many times over the last few decades where misplaced trust in IOUs and regulators led to deadly community consequences.

To address these issues, we suggest the following revisions to Section 2.4.4 and 2.4.4.1:

2.4.4 Pursuant to PU Code 761.3 (g) (3), the emergency response and emergency action plan may shall do all of the following:

2.4.4.1 Consider responses to, and mitigation of, potential offsite impacts, including, but not limited to, wildfire risk, poor air quality, threats to municipal water supplies, water runoff, and threats to natural waterways.

V. Rather than allow the Emergency Response and Emergency Action Plan to include procedures for the local emergency response agency to establish shelter-in-place orders and road closure notifications, the Plan and should instead require the developer to develop strategies and plans in consultation with the local emergency response agency for situations in which those orders and notifications may be issued

Section 2.4.4.2 allows the BESS facility Plan to “include procedures for the local emergency response agency to establish shelter-in-place orders and road closure notifications when appropriate.” While we appreciate the CPUC's effort to ensure proactive response planning, the text mistakenly assumes that it is the BESS facility operator (and the facility Plan) that can dictate when shelter-in-place orders and road closures can be issued by the local emergency response agency. We suggest recasting the section to require the BESS facility owner to work in conjunction with the local emergency response agency to identify situations in which shelter in place orders

and road closure notification should be issued. This will better reflect the inherent nature of, and responsibility invested in, the local emergency response agency.

To address these concerns, we suggest the following revisions to Section 2.4.4.2:

2.4.4.2 **Work in conjunction with** ~~include procedures for~~ the local emergency response agency **to identify situations in which** ~~establish~~ shelter in place orders and road closure notifications **should be issued** ~~when appropriate~~.

VI. Exemptions for facilities under 50MW

Under General Order 167-B, generation facilities under 50MW are exempt from requirements to maintain detailed logbooks, but must instead keep a reasonable log of operations and maintenance consistent with prudent industry practice. Smaller generation facilities are also exempt from General Order 167-B requirements to operate their systems in compliance with the Operation Plan and must instead “be operated in a safe, reliable and efficient manner that reasonably protects the public health and safety of California residents, businesses, and the community.” The proposed revisions to General Order 167-B apply the existing exemptions to BESS facilities under 50MW.

While it is not immediately clear, and appears somewhat ambiguous, as to whether the Legislature intended to exempt smaller BESS facilities under 50MW from logbook and operation requirements, it is important to note that these smaller BESS facilities are much more likely to be located in the hearts of communities and immediately adjacent to residential neighborhoods, commercial developments, etc. It is important for the CPUC to recognize that local community concerns may not be directly proportional to the size of the facility rather than its proximity to homes, schools, and community assets. Because of this, and in light of the more limited local involvement in permitting utility infrastructure projects, the CPUC should pay special attention to oversight of smaller BESS facilities located within communities or adjacent to sensitive resources or environments.

VII. Conclusion

RCRC appreciates the CPUC’s consideration of these comments and suggested modifications. If you should have any questions, please do not hesitate to contact me at jkennedy@rcrcnet.org.

Sincerely,



JOHN KENNEDY
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