

March 3, 2025

Electric Safety and Reliability Branch
Safety and Enforcement Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Comments of the Independent Energy Producers Association on Draft Resolution ESRB-13, Regarding Adoption of General Order 167-C

Dear Sir or Madam:

Pursuant to the provisions of General Order 96-B, the Independent Energy Producers Association (IEP) submits these comments on Draft Resolution ESRB-13, adopting General Order (GO) 167-C.

IEP's comments will fall under two major topics: (1) concerns about the process used to develop revisions to the existing GO 167-B and (2) comments on the details of draft GO 167-C attached to the Draft Resolution.¹

Although IEP still has significant concerns about the process used to develop draft GO 167-C, IEP recognizes the need for the Commission to adopt amendments to GO 167-B that apply to energy storage facilities. IEP can accept GO 167-C as modified by comments on the Draft Resolution for now, but for the reasons stated in these comments, IEP continues to urge the Commission to initiate a rulemaking proceeding so that future amendments to GO 167-C that will soon be needed may be considered and adopted after an open discussion among all affected interests.

I. THE PROCESS USED TO AMEND GO 167 WAS FLAWED

IEP and its members share ESRB's goal of ensuring that generation and storage assets are maintained and operated safely and reliably, but the process employed to amend GO 167-B had repeated shortcomings.

¹ It is unclear whether Rule 14.5, which authorizes comments on draft resolutions, should be read to allow comments on attachments to a draft resolution. Because parties have not had an opportunity to comment on the proposals attached to Draft Resolution ESRB-13, IEP will assume that comments on the attachments to Draft Resolution ESRB-13 are appropriate.

Both the existing GO 167-B and the proposed GO 167-C specify a process for amending GO 167. The draft GO 167-C proposes only a minor deletion to a provision that has been in GO 167 since it was first adopted.²

The Commission ~~thereafter~~ may amend the Standards in a rulemaking proceeding and enforce the Standards as amended³

Rather than urging the Commission to open a rulemaking consistent with this provision, ESRB elected to use an ad hoc process to develop the proposed revisions. The process ESRB followed ran into problems from the start. The subject identified in each of the notices for the first two workshops (described as “technical” workshops) was the “implementation of standards for the maintenance and operation of Energy Storage Systems (ESS), pursuant to Senate Bill (SB) 1383 (Hueso, 2022).”⁴ Thus, the notices of the first two workshops did not reveal that any amendments other than those required by SB 1383 would be considered.

As a result of this incomplete notice, Generating Asset Owners who did not own or operate Energy Storage Systems had no notice that the proposals considered in the first two workshops would have any effect on them or their existing Generating Assets. This lack of notice limited participation in the first two workshops primarily to stakeholders concerned with amendments that applied to Energy Storage Systems. In particular, owners of renewable energy resources had no reason to believe that the proposals would affect their facilities or interests. In fact, the proposed revisions to GO 167-B would **for the first time** require renewable energy facilities to meet Logbook Standards. More generally, the proposed revisions included proposals that went beyond the addition of ESS to the resources subject to the GO (the narrow scope indicated by the notices to the first two workshops), including adding requirements for Emergency Response and Emergency Action Plans, establishing logbook standards for Renewable Generating Assets (who were not previously subject to GO 167-B), revising Logbook

² D.04-05-018, Attachment A, § 15.8.

³ Proposed § 14.7, revising § 15.8. Section 15.12 of GO 167-B states: “Changes to this General Order are effective on the third day following the mailing of the **Commission’s decision** adopting these changes.” (Emphasis added.) The reference to a Commission decision contemplates action in a formal proceeding, not a resolution or other type of Commission order.

⁴ See <https://www.cpuc.ca.gov/regulatory-services/safety/electric-safety-and-reliability-branch/electric-generation-safety-and-reliability/technical-workshop-on-energy-storage-systems-operation-and-maintenance-standards> (Workshop I); <https://www.cpuc.ca.gov/regulatory-services/safety/electric-safety-and-reliability-branch/electric-generation-safety-and-reliability/technical-workshop-ii-on-energy-storage-systems-operations-and-maintenance-standards-05-30-2024> (Workshop II).

Standards for all Generating Assets (GAs), modifying and expanding Maintenance and Operations Standards for GAs and ESS, removing obsolete references, updating definitions, and updating applicable industry codes, standards, and organizations.

Then, the initial notice of the third workshop that finally revealed the full scope of the proposed amendments was not served on all the service lists that were indicated in the notice. A subsequent notice ultimately reached the relevant service lists. Thus, until the second issuance of the notice for Workshop III, Generating Asset Owners who did not also operate ESS and owners of Renewable Generating Assets⁵ had no notice that the proposed changes to GO 167-B would affect their facilities and interests.

In addition to the notice problems, the workshops were very rigidly structured, consisting of presentations by ESRB staff on specific revisions, with very little opportunity for interaction with the participants who will be subject to the amendments. Participants were asked to “limit questions during the workshop to clarifying questions.”⁶ Questions could not be asked orally but could only be submitted using the Q and A function of Webex, which did not always work well. Participants could submit questions but could not offer comments or make points relevant to the topic being discussed. In other words, the workshops were one-way conversations, and ESRB showed little interest in engaging with Generation Asset and Energy Storage System representatives who were eager to contribute their experience and expertise to development of effective requirements. ESRB did not solicit proposed amendments from representatives of the affected Generating Assets and ESS. Participants could submit written comments after the workshops were concluded, but ESRB was under no obligation to respond to the comments.

This approach contrasts with the approach taken when GO 167 was initially developed, when input from the affected generators was welcomed and actively solicited. When developing the structure and contents of the Operating Plan Summary, for example, the Commission made clear that “GAOs are encouraged to assist by submitting a proposal” and instructed the Executive Director to “employ all reasonable and feasible suggestions of GAOs to moderate the burden on

⁵ “Renewable Generating Assets,” a term used in the proposed Generating Asset and Energy Storage System Logbook Standards, is not defined in the proposed GO 167-C.

⁶ See “Technical Workshop I on Energy Storage Systems Operation and Maintenance Standards, 03-26-2024,” available at <https://www.cpuc.ca.gov/regulatory-services/safety/electric-safety-and-reliability-branch/electric-generation-safety-and-reliability/technical-workshop-on-energy-storage-systems-operation-and-maintenance-standards> . Note that the title of the workshops reinforced the impression given by the notice that the workshop concerned only issues related to energy storage systems.

GAOs while meeting the Commission’s need to have information in a usable form so that the Commission may fulfill its duties.”⁷

Finally, due to the questions during the ESRB workshops being limited to the specific amended language, there was no explanation provided about why amendments were needed or what policies led to the amended language.

These problems led IEP to file a Petition for Rulemaking, P.24-09-013, asking the Commission to initiate a rulemaking proceeding to consider amendments, the process specifically allowed by GO 167-B (and proposed GO 167-C). Rulemaking proceedings offer several advantages over other procedural options. First, new rulemakings are typically served on multiple service lists, so that any party potentially affected by the subject of the rulemaking will be made aware of the potential scope of proposed standards or requirements, ensuring that the notice element of due process is satisfied. Second, interested parties are usually provided multiple opportunities to comment on the proposals and to offer proposals of their own. Thus, any amendments that eventually result from a rulemaking proceeding will have been informed by the real-world experience of the affected parties. Third, the Commission’s decisions adopting the new or revised rules are required to explain the reasoning behind the Commission’s determinations, so that parties are well-informed about why the specific rules were adopted.⁸ Fourth, action by the Commission in a formal rulemaking avoids any question about proper delegation of authority to staff.

A formal rulemaking proceeding, as IEP proposed, would be open to all interested parties, with adequate notice of all significant steps in the proceeding—issuance of an Order Instituting Rulemaking, prehearing conference, scoping memo and ruling defining the issues and setting the schedule. Parties’ proposals and responses to proposals would be circulated to all parties, and workshops could be structured to permit a vigorous debate and discussion of proposals. The end result of a rulemaking proceeding would be a revised GO 167, informed by

⁷ D.04-12-049, p. 22.

⁸ Public Utilities Code section 1705 requires the Commission’s decisions to include separately stated findings of fact and conclusions of law. As the California Supreme Court explained in *Greyhound Lines, Inc. v. Public Utilities Com.* (1967) 65 Cal.2d 811, 813:

[S]uch findings afford a rational basis for judicial review and assist the reviewing court to ascertain the principles relied upon by the commission and to determine whether it acted arbitrarily, as well as assist parties to know why the case was lost and to prepare for rehearing or review, assist others planning activities involving similar questions, and serve to help the commission avoid careless or arbitrary action.

the real-world experience of affected parties, that incorporates practical ways to promote and improve the safety and reliability of California's generation and storage resources.

Despite the procedural shortcomings of ESRB's approach, ESRB responded to the written comments submitted by parties, and the resulting GO 167-C is acceptable to IEP. IEP recognizes the need for the Commission to adopt safety standards for Energy Storage Systems. Although a process that allowed for freer communications by affected parties during the development of the amendments might have resulted in a better GO 167-C, IEP believes that most generators and energy storage owners will be able to accept and comply with the proposed GO 167-C for now.

However, GO 167-C is likely to become out-of-date nearly as soon as it is adopted. As the Draft Resolution noted, the rapid growth of solar and wind capacity has created a sudden need for energy storage facilities to help stabilize the power supply from those intermittent resources, and numerous varieties of energy storage have emerged. Energy storage technologies now include non-lithium-ion batteries, flow batteries, long-duration and multi-day technologies, pumped storage, compressed air, hydrogen storage, and other technologies that are distinct from the more familiar lithium-ion batteries. Each of these storage technologies has its own operation and maintenance needs, and safety standards will need to be crafted to reflect the different characteristics and needs of each of these emerging technologies. GO 167-C, as proposed by ESRB, focuses primarily on characteristics of the 4-hour lithium-ion batteries that have dominated the market in recent years, but due to the pace of innovation around energy storage, new amendments to GO 167-C will be soon be needed to fit the operating characteristics and safety practices of new storage and generation technologies.

As new storage technologies evolve, safety standards will also evolve; safety standards for battery storage facilities are already evolving to address recent refinements to battery storage technologies. The requirements of GO 167-C should develop in parallel with that evolution, so that the most recent safety standards will apply to California's storage facilities.

To ensure that GO 167-C and its successors adopt standards that are effective at promoting safety for an increasing variety of storage and generating technologies, the Commission needs to be poised to act quickly as new technologies become operational. IEP shares the Commission's goal of establishing clear rules and requirements to maximize the safety of generating and energy storage facilities in California. IEP's members have the experience and expertise and are eager to advise the Commission on the development of effective and feasible

requirements that should be incorporated in subsequent versions of GO 167. It is essential for these requirements to be developed in a forum that allows for a free exchange of ideas and information between all relevant interests.

IEP's Petition provides the Commission with a convenient vehicle—a rulemaking proceeding—to consider and adopt amendments to GO 167-C that will be needed to keep up with developments in the energy storage and generation industries. Having an open rulemaking proceeding to consider revisions to GO 167-C and subsequent versions will give the Commission the flexibility to quickly make changes to safety requirements and adopt amendments as necessary.

Thus, IEP can accept the proposed GO 167-C for now but urges the Commission to open a rulemaking to consider and adopt amendments to GO 167-C and subsequent versions so that the Commission has a vehicle to respond flexibly and quickly to promote the safe and reliable operation of new storage and generation technologies.

II. COMMENTS ON DRAFT GO 167-C

ESRB has accomplished the tasks assigned to the Commission by Senate Bill (SB) 1383 (addition of ESS to entities subject to the GO) and SB 38 (ESS to develop and maintain emergency response and emergency action plans). ESRB has also cleaned up and updated a GO that was essentially unchanged for two decades.

When ESRB's revisions extend into other areas, the revisions are not always successful, in large part because the process described above did not put ESRB in position to receive the benefit of the experience and expertise of generators and energy storage providers.

The following are IEP's comments on certain provisions of the proposed GO 167-C and the amended Generating Asset and Energy Storage System Logbook Standards (Logbook Standards).

Proposed GO 167-C

Section 9.3.1: The proposal removes “monthly” from the description of the reporting requirement, although the cited statute, Pub. Util. Code § 761.3(e), requires a monthly report. As written, it is now unclear when the reports are required to be submitted.

Section 9.4: The property damage reporting threshold of \$50,000 was set two decades ago and should be adjusted. An earlier version proposed a threshold of \$200,000, which is more in line with the current value of the dollar, and an even higher threshold would be justified. This section also requires the GO or ESS Owner to report any incident resulting in negative media

coverage resulting in a news story or editorial from a media outlet. Since the title of Section 9.4 is “Safety-Related Incidents,” the reporting obligation should be limited to safety-related incidents. In addition, it is not clear if this report on negative media coverage is required within the first 24 hours after an incident. A GO or ESS Owner’s attention will be focused on addressing the incident and identifying preventive actions during the first 24 hours, and owners should not be expected or required to be monitoring media outlets during this period. This report should be submitted within five business days, when copies of reports submitted to other governmental agencies are due.

Logbook Standards: The existing logbook standards for thermal energy have been expanded to include BESS and Renewable Generating Assets. But revisions fail to take into account the operating differences between conventional thermal assets and ESS and Renewable Generating Assets, especially solar and wind generators whose output can vary substantially from minute to minute. For example, the Facility Status that is required to be entered at the same time each calendar day includes entries for “Current power (MW) and/or energy output (MWH)” and “Available capacity of the facility.”⁹ For variable energy facilities and for storage facilities, a single spot reading might not reveal anything useful about the status of the facility, because the output can vary significantly throughout the day (and energy output will be nonexistent for solar facilities after sunset). For ESS, the current energy output might be negative while the facility is charging and may swing significantly while the facility transitions between charging and discharging, potentially two or more times a day. Multi-day energy storage facilities can show either positive energy output (discharging) or negative energy output (charging) for several days in succession. Other than going through the motions of making entries in the logbook, it is unclear what value this requirement is expected to provide.

Similar issues arise for the “available capacity” entry. A solar facility can have a potentially available capacity of 100 MW, but the useful capacity can be 0 MW at night. A 100 MW wind facility might have 90 MW potentially available, but without sufficient wind, there is no way to tap that available capacity. A battery storage facility presents a similar issue—the available capacity is dependent on the state of charge, which in turn will depend on the facility’s recent discharging history.

⁹ Logbook Standards, § III.B.1.a.

These concerns are compounded by the requirement to log “any changes to the facility MW output,”¹⁰ except when the facility is on Automatic Generation Control (AGC) or Automatic Dispatch System (ADS). The MW output of wind resources can vary quickly and significantly, depending on the status of the wind resource, and the output of solar photovoltaic facilities can vary with the cloud cover.

In addition, the Logbook Standards are proposed to apply to “Renewable Generating Assets,” but that term is not defined. The first sentence of the Logbook Standards states that the Standards are intended to apply to “solar, wind, [and] geothermal energy,” but owners of other types of renewable energy facilities are left to guess, at the risk of significant penalties for guessing wrong, whether their plants are subject to the new Standards. Moreover, “Thermal Energy” is defined to include generation powered by geothermal energy, leaving owners of geothermal plants uncertain about whether the facility is subject to the Logbook Standards for Thermal Generating Facilities or Renewable Generating Assets. And what about a biomass generating unit that is defined by statute as a “renewable electrical generation facility”¹¹ but is powered by “the combustion of fuels”?¹²

The Logbook Standards are written to apply broadly to broad categories of generation and storage resources, but they fail to take into account the variety of operational profiles presented when renewable resources and battery storage facilities are made subject to standards that were initially designed to apply to conventional thermal resources. This failure is a direct consequent of the process chosen to develop these standards. If ESRB had entered into discussions with the representatives of renewable generating and battery storage projects, the standards could have been better fashioned to fit the new technologies that are subject to the Logbook Standards. Moreover, the mismatch between GO 167-C’s requirements and the characteristics of new storage and generating technologies will likely grow larger as newer technologies begin operation. The need for the Commission to respond to evolving technologies and safety standards led IEP to file its Petition for Rulemaking. The rulemaking proceeding requested by IEP would present a forum for the types of open conversations needed to shape the standards to fit the added resource types.

¹⁰ Logbook Standards, § III.B.1.a (second subdivision a) under § III.B.1).

¹¹ Pub. Res. Code, § 25741(a)(1); see Pub. Util. Code, § 399.12(e).

¹² Proposed GO 167-C, § 2.22.

III. CONCLUSION

For the reasons stated in these comments, IEP respectfully asks the Commission to modify the Draft Resolution and proposed GO 167-C as these comments recommend. These comments also explain why IEP continues to urge the Commission to open a rulemaking to consider further changes to GO 167-C and subsequent versions, as requested in P.24-09-013.

Very truly yours,

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Service Lists for R.23-10-011 and R.20-05-003