

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Oversee the Resource )  
Adequacy Program, Consider Program Refinements, )  
and Establish Annual Local and Flexible Procurement ) Rulemaking 17-09-020  
Obligations for the 2019 and 2020 Compliance Years. ) (Filed September 28, 2017)  
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**COMMENTS OF THE CCA PARTIES  
ON THE SCOPING MEMO AND RULING**

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Dated: January 30, 2018

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Pursuant to the January 18, 2018 *Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge* (“Scoping Memo”) in this proceeding, and the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, East Bay Community Energy (“EBCE”), the City of Lancaster (“Lancaster”), Marin Clean Energy (“MCE”), Peninsula Clean Energy Authority (“PCE”), Silicon Valley Clean Energy Authority (“SVCE”), and Sonoma Clean Power Authority (“SCP”) (collectively, “CCA Parties”) hereby submit the following comments on the Scoping Memo.

**I. INTRODUCTION AND SUMMARY**

Among other things, the Scoping Memo outlines the proceeding scope and schedule, provides notice of staff proposals, and solicits party proposals for additional resource adequacy (“RA”) program changes for the 2019 compliance year. The CCA Parties commend the assigned commissioner and administrative law judge for framing the Scoping Memo in a manner that allows for the examination of time-sensitive RA issues on an expedited basis, while preserving procedural safeguards and process. This balance is particularly important given the need for

review in a formal proceeding of the issues raised by Draft Resolution E-4907 (“Draft Resolution”).

Through the California Community Choice Association (“CalCCA”), the CCA Parties have addressed RA-related issues implicated by the Draft Resolution. Importantly, CalCCA has advocated that this proceeding, and in particular Track 1, should be used as the venue to address time-sensitive RA-related issues associated with the implementation of Community Choice Aggregation (“CCA”) programs. The CCA Parties agree.<sup>1</sup> As further discussed below, the CCA Parties support the Scoping Memo’s determination that key RA programmatic questions related to load migration should be addressed expeditiously within this proceeding, not through the Draft Resolution.<sup>2</sup> These key RA programmatic questions properly fit within this proceeding, as the RA proceeding’s Order Instituting Rulemaking (“OIR”) contemplates this proceeding for “any changes and refinements” to the RA program, and the OIR cites the Commission’s long history of using the RA rulemakings as the “forum for RA decisions.”<sup>3</sup>

The Scoping Memo’s inclusion of these issues is important because a formal proceeding provides the proper context within which substantive proposals can be made, factual assertions examined and rebutted, arguments advanced, and due process requirements can be satisfied. Moreover, use of memorandum account treatment can ensure that the investor-owned utilities’ (“IOUs”) cost allocation concerns do not unnecessarily trump process and procedure. Further, given the direct overlap of Cost Allocation Methodology (“CAM”) issues with multi-year RA

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<sup>1</sup> See, e.g., Motion of the CCA Parties to Supplement Comments on the Order Instituting Rulemaking at 3-4 (December 21, 2017).

<sup>2</sup> See Scoping Memo at 6-7 (scoping such programmatic questions within Track 1).

<sup>3</sup> OIR at 1-2.

and centralized buying in Track 1, and the related potential for anti-competitive impacts, the CCA Parties encourage the inclusion of the CAM within Track 1 of this proceeding.

## II. COMMENTS

### A. Track 1's Time-Sensitive Review Of RA Issues Minimizes The Need For Action Through The Draft Resolution

The Scoping Memo divides the proceeding into three separate tracks. Track 1 will address refinements to the Commission's RA program and be resolved on a time-sensitive schedule leading to a decision in Spring of 2018.<sup>4</sup> A "top priority" issue for Track 1 is "whether" participation in the year-ahead RA showing should be required to start serving load in the following year.<sup>5</sup> Track 1 will also review necessary RA program reforms, as well as "any other time sensitive issue identified."<sup>6</sup> Party proposals for the RA program, and the year-ahead showing issue, is scheduled to start on February 16, 2018.<sup>7</sup>

The scope and expedited treatment of key load migration issues minimize the need for action through the Draft Resolution, and allows the Draft Resolution to be modified in a way that is complementary to action contemplated in this proceeding. As originally written, the Draft Resolution would make determinations on the same or similar RA program issues, including year-ahead RA showing participation, at the Commission's February 8 business meeting.<sup>8</sup> Under the original timeline, this would mean that the RA showing determination will have already been made nine days before parties are provided the opportunity to propose "whether" additional RA year-ahead showing requirements should exist, and how the requirements should be structured.

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<sup>4</sup> Scoping Memo at 13.

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> December 27, 2017 e-mail from the Energy Division to R.17-06-026 service list.

Issuance of the Scoping Memo allows the Draft Resolution to be modified in a manner that identifies key RA-related issues, sets those issues for determination in the RA proceeding and preserves cost-allocation matters for future disposition. In short, the Draft Resolution should be modified to be complementary with the Scoping Memo's timeline and process for resolving Track 1's time-sensitive issues.<sup>9</sup>

The CCA Parties appreciate that CalCCA has addressed these matters in general within the procedural process associated with the Draft Resolution. The CCA Parties echo CalCCA's comments, and in particular acknowledge efforts by the Energy Division to highlight time-sensitive issues. Issuance of the Scoping Memo, and the schedule for Track 1, accomplishes the Draft Resolution's goal: expedited resolution. Party proposals are due next month and will result in a conclusion in the spring – considerably ahead of the October year-ahead filing obligation timeframe. Moreover, even with respect to 2018-related issues, Track 1 can and should be used to establish the record for activities contemplated in the Draft Resolution, as generally described in Section B, below. In this way, the Draft Resolution and this proceeding can operate in concert to address these issues.

The CCA Parties also desire, through these initial comments, to put forward additional thoughts as to how these time-sensitive matters can be addressed without adversely affecting CCA implementation or compromising cost-allocation issues. The CCA Parties look forward to advancing a more fleshed-out proposal on February 16, ideally in concert with the IOUs.<sup>10</sup>

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<sup>9</sup> Draft Resolution at 6-10, 16 (directing year-ahead participation before serving load).

<sup>10</sup> See Scoping Memo at 12 (listing February 16, 2018 as the date by which Track 1 proposals are to be filed).

The RA proceeding, and the Scoping Memo’s timeline, allows parties an adequate opportunity to consider and address proposals, while also being mindful of the need for prompt action. The Scoping Memo recognizes that parties may need to examine RA program cost claims, and provides for evidentiary hearing and discovery in a manner consistent with the Commission’s rules. The Scoping Memo’s approach addresses a major concern expressed with the Draft Resolution, namely, that determinations on RA cost allocation and new RA showing requirements are proposed to be made with sole reference to untested, confidential data of a single IOU.<sup>11</sup> The RA proceeding’s process will provide a proper venue and underlying record for decisions on RA program requirements.

The Scoping Memo’s Track 1 resolution is consistent with past Commission actions in the RA proceedings. In D.15-06-063, the Commission was presented with the opportunity to make changes to the CAM. Since the CAM mechanism changes “have been scoped into the 2014 [Long-Term Procurement Plan (“LTPP”)] LTPP Proceeding,” the Commission determined to “defer consideration of this issue to the LTPP proceeding.”<sup>12</sup> Similarly in D.15-06-063, the Commission reviewed proposals for Flexible RA requirement changes, but since Phase 2 of the proceeding would be considering flexible product issues, the Commission determined it would be “more appropriate and effective” to address these issues there.<sup>13</sup>

In light of the Scoping Memo, the Commission should restructure its February 8, 2018 consideration of the Draft Resolution so that immediate cost-allocation issues are preserved through memorandum account treatment and substantive RA program changes are procedurally

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<sup>11</sup> See Draft Resolution at 7 (for reference to confidential data).

<sup>12</sup> D.15-06-063 at 30.

<sup>13</sup> *Id.* at 46.

addressed in Track 1 of this proceeding. Resolution of these changes through Track 1, where a record can be developed and party claims can be reviewed in a transparent manner, is more appropriate and effective.<sup>14</sup> By preserving cost-allocation issues through the authorization of memorandum accounts, the Draft Resolution will address a time-sensitive matter without compromising process and procedure.

**B. Memorandum Account Treatment Can Be Used To Preserve Time-Sensitive Cost-Allocation Issues**

As noted above, the CCA Parties, ideally in concert with the IOUs, plan to advance a more detailed proposal on February 16. In light of the Commission's possible consideration of the Draft Resolution at its February 8 meeting, the CCA Parties offer these initial comments as to how time-sensitive cost-allocation issues can be preserved so that the expected June 2018 Track 1 decision in this proceeding can be used to more effectively and fairly address time-sensitive RA-related issues associated with CCA programs.

A parallel for memorandum account treatment is being addressed in Application 16-11-005, the IOUs' consolidated application to recover above-market costs associated with tree mortality power purchase agreements in compliance with Senate Bill ("SB") 859 and Resolution E-4805. In that proceeding, the IOUs are attempting to establish a cost-allocation mechanism for procurement made on behalf of all customers, including customers that are departing for CCA programs. Since the outcome in that proceeding is expected to occur after the IOUs' incurrence of certain costs, the IOUs have established memorandum accounts into which the IOUs are recording costs that subsequently may be allocated based on a Commission decision.<sup>15</sup>

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<sup>14</sup> See CalCCA Comments on Draft Resolution E-4907 at 11-12.

<sup>15</sup> See, e.g., Southern California Edison Company ("SCE") Advice Letter 3497-E-A (establishing the Biomass Memorandum Account (BioMASSMA)).

Memorandum accounts are effective ways to preserve costs for subsequent disposition.<sup>16</sup> By establishing memorandum accounts in this case, the Commission can avoid the unnecessary rush to alter CCA program implementation processes while the Commission works in this proceeding to address underlying RA-related issues.

As such, the CCA Parties urge the Commission, through the Draft Resolution, to authorize the IOUs to establish memorandum accounts to track actual RA-related costs associated with 2018 load migration to CCA programs. In doing so, the Commission will preserve this issue, and allow parties to thoughtfully (yet expeditiously) address this issue. On February 16, the CCA Parties plan to put forth a proposal as to how actual costs may be determined and assigned to responsible CCA programs. For now, preserving costs, through memorandum accounts, should satisfy concerns about possible cost-shifting.

**C. CAM Should Be Addressed Within Track 1 Due To Direct Overlap With Multi-Year And Centralized Buying Issues**

Within the discussion of potential RA program reforms in Track 1, the Scoping Memo states that the RA program reforms “may include central buyers” or a “multi-year procurement framework.”<sup>17</sup> The large IOUs are provided as an example of a central buyer.<sup>18</sup> Since Community Choice Aggregators are public agencies with general procurement autonomy granted by statute, the CCA Parties are concerned that this language in the Scoping Memo could potentially be interpreted as counter to the approach specified by the Legislature. In Public Utilities Code Section 366.2(a)(5), a Community Choice Aggregator shall be “solely

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<sup>16</sup> See, e.g., SCE AL 3491-E-A at 11 (“Disposition of amounts recorded in the BioMASSMA will be determined by the Commission in a future application.”).

<sup>17</sup> Scoping Memo at 6.

<sup>18</sup> *Id.* at 4.

responsible” for all generation procurement activities, unless expressly authorized by statute.<sup>19</sup> Similarly, Section 380 states that RA procurement authority and responsibility rests with *each* Load Serving Entity, which explicitly includes Community Choice Aggregators.<sup>20</sup> Proposals related to these RA program reforms should be considered within this statutory context, and should align with CCA procurement autonomy.

The proposed considerations of multi-year RA and centralized buying in Track 1 have a direct overlap with the CAM. CCA customers are faced with costs stemming from IOUs’ long-term commitments through the CAM. As highlighted in past comments,<sup>21</sup> multi-year RA requirements can pose anti-competitive dynamics, since CCAs are not guaranteed cost recovery for the cost of RA capacity. Given the potential for anti-competitive impacts on CCA programs, a review of CAM structure is needed as part of Track 1. Thus, the CCA Parties request that “potential reform to the CAM” be considered within Track 1 of this proceeding.

**D. IOU Solicitation Issues Are Time-Sensitive And Should Be Addressed As Part Of Track 1**

In the Scoping Memo, Track 1 involves consideration of “any time-sensitive issue” and any “RA program reforms necessary to maintain reliability while reducing potentially costly backstop procurement.”<sup>22</sup> Any discussion of year-ahead RA procurement must include a review of the IOUs’ solicitation processes for capacity to meet these year-ahead procurement obligations. Resolution of these issues through Track 1 is needed to reach a determination ahead of the October year-ahead filing obligation timeframe. Since considerable load departure from

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<sup>19</sup> All further statutory references are to the Public Utilities Code, unless otherwise noted.

<sup>20</sup> *See, e.g.*, Section 380(c)-(k) (Setting RA responsibilities for “each” LSE).

<sup>21</sup> *See* Reply Comments of CCA Parties on Phase 3 Proposals in R.14-10-010 at 5 (March 24, 2017).

<sup>22</sup> Scoping Memo at 6.

the IOUs in recent years can result in IOU RA capacity volumes that are in excess of regulatory requirements, the Commission should examine under what conditions excess RA capacity volumes are retained beyond the year-ahead RA compliance deadline, what impact the retention of excess volumes would have on customers, and whether market power issues arise.<sup>23</sup>

A review of the solicitation process for excess volumes should be conducted since past processes, which are lengthy and conclude in October,<sup>24</sup> cause market inefficiencies and in turn create buyer duress in late October. An increase in available RA capacity solicitations is consistent with the Track 1 objectives of the Scoping Memo, and will maintain grid reliability while reducing potentially costly backstop procurement. Commission review of RA capacity solicitations and excess volumes in Track 1 would also be beneficial because the availability of RA capacity would inform discussion on RA waivers, which is also scheduled for review in this proceeding.<sup>25</sup>

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<sup>23</sup> See CCA Parties Comments on the OIR at 4 (October 30, 2017) (for past discussion of this issue).

<sup>24</sup> See, e.g., SCE's 2017 Request for Offer Process (begins in July with notification in October) available at [goo.gl/MPyQgK](http://goo.gl/MPyQgK).

<sup>25</sup> Scoping Memo at 7-8.

### III. CONCLUSION

The CCA Parties thank the Commission for its consideration of the matters addressed in these comments.

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Respectfully submitted,

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