

**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 Obligations  
for the 2019 and 2020 Compliance Years

R.17-09-020

**JOINT REPLY COMMENTS OF CALIFORNIA COMMUNITY CHOICE  
ASSOCIATION, CALPINE CORPORATION, INDEPENDENT ENERGY PRODUCERS  
ASSOCIATION, MIDDLE RIVER POWER, LLC, NRG ENERGY, INC., SAN DIEGO  
GAS & ELECTRIC COMPANY (U 902-E), SHELL ENERGY NORTH AMERICA (US)  
L.P., AND WESTERN POWER TRADING FORUM ON MOTION  
FOR ADOPTION OF SETTLEMENT AGREEMENT**

Irene K. Moosen  
California Community Choice Association  
One Concord Center  
2300 Clayton Road, Suite 1150  
Concord, CA 94521  
415.587.7343  
[regulatory@cal-cca.org](mailto:regulatory@cal-cca.org)

Director, Regulatory Affairs  
California Community Choice Association

Evelyn Kahl  
Ann Springgate  
Meghan Thomas  
Buchalter, A Professional Corporation  
55 Second Street  
Suite 1700  
San Francisco, CA 94105  
415.227.0900  
[ekahl@buchalter.com](mailto:ekahl@buchalter.com)

Counsel to the California Community Choice  
Association

October 15, 2019

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Pursuant to Rule 12.2 of the Commission’s Rules of Practice and Procedure, the California Community Choice Association, Calpine Corporation, Independent Energy Producers Association, Middle River Power, LLC, NRG Energy, Inc., San Diego Gas & Electric Company, Shell Energy North America (US) L.P., and the Western Power Trading Forum (together, the “Settling Parties”)<sup>1</sup> file these Joint Reply Comments on the *Joint Motion of [the Settling Parties] for Adoption of the Settlement Agreement for a “Residual” Central Procurement Entity Structure for Resource Adequacy* dated August 30, 2019 (“Joint Motion”).

**I. THE SETTLEMENT AGREEMENT IS A GOOD FAITH, COLLABORATIVE RESPONSE TO THE COMMISSION’S REQUEST FOR PARTIES TO PRESENT A WORKABLE CENTRAL BUYER PROPOSAL**

The Commission has struggled for nearly two years to develop a resource adequacy (“RA”) central procurement framework through stakeholder consensus. Unfortunately, those efforts were brought to a virtual standstill by a logjam of highly polarized views on how the

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<sup>1</sup> Counsel to CalCCA is authorized to sign this Joint Motion on behalf of each of the Settling Parties.

framework should be structured and who should serve as the central procurement entity (“CPE”). While the Settlement Agreement does not attempt to fully resolve all issues, it breaks the logjam by providing the Commission a workable RA-CPE framework in *direct response to the Commission’s unambiguous requests*.

The Commissioners challenged parties at the February 21, 2018, Business Meeting and expressly in Decision (D.) 19-02-022 to develop a workable, implementable solution for central procurement. The Commission stated that a “workable” implementation solution would address several known challenges to the local RA program:

- (1) “costly out-of-market RA procurement due to local procurement deficiencies”;
- (2) “load migration and equitable allocation of costs to all customers”;
- (3) “cost effective and efficient coordinated procurement”;
- (4) “treatment of existing local RA contracts”;
- (5) “opportunity for and investment in procurement of local preferred resources”; and
- (6) “retention of California’s jurisdiction over procurement of preferred resources.”<sup>2</sup>

The Commissioners further mentioned the need to mitigate both the risk of RA deficiencies and the need for waiver requests (which then-President Picker referred to as “RA crimes”). In addition, while not mentioned expressly, the Commission must ensure that any central buyer mechanism complies with its statutory obligation, including the requirement – repeated twice in Public Utilities Code Section 380<sup>3</sup> – to ensure self-procurement autonomy for Community Choice Aggregators. All this work, the Commission directed, needed to be completed within sufficient time to adopt a central procurement mechanism in the fourth quarter of 2019.<sup>4</sup>

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<sup>2</sup> D.19-02-022 at 18.

<sup>3</sup> Cal. Pub. Util. Code §§ 380(a)(5), 380(g)(5).

<sup>4</sup> D.19-02-022 at 18.

The Settlement Agreement responds directly and effectively to the Commission's call. It will:

- (1) Reduce out-of-market RA procurement and eliminate local procurement deficiencies by placing the RA Central Procurement Entity ("RA-CPE") in a backstop role;
- (2) Address load migration through the use of a cost allocation mechanism based on a load-serving entity's ("LSE's") actual load and grounded in principles of cost causation;
- (3) Result in cost effective and efficient coordinated procurement, by placing the RA-CPE in a position to ensure all RA requirements are met;
- (4) Preserve the value of existing RA procurement commitments and RA contracts ;
- (5) Preserve the opportunity for and investment in procurement of local preferred resources," leaving room to further address this issue through development of selection criteria for RA-CPE procurement; and
- (6) Retain California's jurisdiction over procurement of preferred resources by keeping as much responsibility for RA procurement in the hands of LSEs and allowing the Commission to determine RA-CPE resource selection criteria.

Critically, the Settlement Agreement also complies squarely with Section 380 by preserving LSE procurement autonomy.

The Settlement Agreement reflects major compromises and the resulting consensus proposal among Community Choice Aggregators ("CCAs"), one of the state's largest investor-owned utilities ("IOUs"), and key wholesale market participants, with the general support of the California Independent System Operator ("CAISO") and electric service providers ("ESPs"). Other than the proposed RA-CPE framework outlined in the Settlement Agreement, this proceeding has not produced any well-developed alternative proposals that are fully supported by more than a single party. The Settlement Agreement thus not only represents the only proposal made in direct response to the Commission's repeated requests for a consensus central buyer proposal, it also represents real progress.

Comments on the Settlement Agreement attempt to move the Commission back into the logjam:

- ✘ Pacific Gas and Electric Company (“PG&E”) and Southern California Edison (“SCE”) continue to promote their individually preferred procurement models.
- ✘ Other parties, even some that favor a residual procurement model, “oppose” the settlement for its failure to address their particular issues.
- ✘ Still other parties object to the Settlement Agreement because it does not address all the issues identified in the Track 2 Decision, in some cases ignoring the fact that the Settling Parties intentionally left issues open to allow for additional stakeholder input.<sup>5</sup>

A few parties also take issue with the Settlement Agreement on grounds that the Settling Parties do not “fairly represent all affected IOU or other LSE interests and do not include any parties representing customers or environmental interests,”<sup>6</sup> and not all parties were included in the settlement discussions.<sup>7</sup>

The Settling Parties acknowledge that not all parties were included in our settlement discussions,<sup>8</sup> that the Settlement Agreement could not in the time provided address all the interests of all stakeholders, and that it does not address all the implementation issues that will need to be addressed. The Settling Parties’ limited scope and outreach to other parties, however, was a consequence of the clear lines of polarization in the Commission-directed workshop process and the very limited time available to develop a consensus proposal. Given the amount of work that was required to get just the Settling Parties on the same page, it is no exaggeration

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<sup>5</sup> Comments of The Utility Reform Network (TURN Comments) at 1; Comments of the Center for Energy Efficiency and Renewable Technologies (CEERT Comments) at 2.

<sup>6</sup> Comments of Southern California Edison (SCE Comments) at 18-19.

<sup>7</sup> *See, e.g.*, Comments of the Cogeneration Association of California (CAC Comments) at 2.

<sup>8</sup> The Settling Parties note that more parties participated in settlement discussions than ultimately became signatories and, further, that representatives from one or more of the Settling Parties had multiple discussions with several other important parties during the course of settlement discussions.

to say that, at the end of the day, there simply would have been no work product to timely present to the Commission had the settlement discussions been opened to more parties.

The Settlement Agreement thus represents a good faith and collaborative effort to respond to the Commission’s requests with a detailed and workable proposal for a residual central procurement framework. The Settling Parties believe that the proposed RA-CPE framework is in the public interest<sup>9</sup> and request adoption of the Settlement Agreement in its entirety and without modification.

## **II. THE SETTLEMENT AGREEMENT IS WITHIN THE BROAD SCOPE OF THIS PROCEEDING AND RESPONDS TO RECENT FINDINGS IN R.16-02-007**

SCE and PG&E claim that that Settlement Agreement exceeds the scope of Track 2 by proposing multi-year requirements for system and flexible RA.<sup>10</sup> PG&E further claims that the referral of the issue of IOUs’ sales of their “excess” RA capacity to Working Group 3 in the Power Charge Indifference Amount (“PCIA”) rulemaking, Rulemaking (R.) 17-06-026, likewise exceeds this proceeding’s scope.<sup>11</sup> These objections are without merit and should be dismissed.

PG&E’s concern regarding the Settlement Agreement’s reference to IOU excess sales is misguided. The Settlement Agreement expressly acknowledges that the sale of IOUs’ excess RA is being addressed in R.17-06-026, Working Group 3.<sup>12</sup> The Settlement Agreement does not propose to address or resolve the issue in this proceeding, and the Settlement Agreement’s mere mention of the issue does not cause the Settlement Agreement to exceed the scope of this proceeding.<sup>13</sup>

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<sup>9</sup> Joint Motion at 7.

<sup>10</sup> SCE Comments at 4. Comments of Pacific Gas & Electric Company (PG&E Comments) at 7.

<sup>11</sup> PG&E Comments at 18.

<sup>12</sup> Joint Motion, Appendix A at 6, n.3.

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

In contrast, PG&E’s and SCE’s suggestion that the Settlement Agreement goes beyond the scope of this proceeding by proposing multi-year forward procurement requirements for system and flexible RA warrants a more fulsome discussion. While the Settling Parties acknowledge the Commission did not adopt proposals for broader multi-year requirements in Track 2, the issue has been discussed repeatedly in this proceeding. More importantly, looming shortages of system RA capacity heighten the need for prompt consideration of the issue.<sup>14</sup>

The scope of this proceeding – R. 17-09-020 – is very broad. As the Commission’s Order Instituting Rulemaking (“OIR”) for the proceeding stated:

We open this rulemaking to oversee the resource adequacy program, make any changes and refinements to the program, and establish local and flexible procurement obligations applicable to load-serving entities beginning with the 2019 compliance year.<sup>15</sup>

The 2018 Scoping Memo establishing the scope for Tracks 1 and 2 likewise left the door open to consider “RA program reforms necessary to maintain reliability while reducing potentially costly backstop procurement...”<sup>16</sup> These reforms, the Commission explained, “may include central buyers, a multi-year framework for Local RA (and associated cost allocation), as well as *other proposals to address out-of-market procurement and increase transparency.*”<sup>17</sup> It also made clear that a multi-year local RA program was simply one example of such a proposal.<sup>18</sup>

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<sup>14</sup> See Proposed *Decision Requiring Electric System Reliability Procurement for 2021-2023*, issued September 12, 2019 in R.16-02-007, recommending the extension of compliance deadlines for once-through-cooled generating units and directing the procurement of 2,500 MW of incremental capacity to address system RA capacity shortfalls.

<sup>15</sup> *Ordering Instituting Rulemaking*, R.17-09-020, Oct. 4, 2017, at 1.

<sup>16</sup> 2018 Scoping Memo at 6, §4.b.

<sup>17</sup> *Id.* at 6-7 (emphasis added).

<sup>18</sup> *Id.* at 4 (“Potential approaches to reduce future out-of-market RA procurement, such as a multi-year Local RA program and/or one or more central buyers (e.g., the large investor-owned utilities), will be prioritized for consideration in Track 1 of this proceeding.”).

In its Track 1 decision, D.18-06-030, the Commission observed that parties had focused on multi-year procurement for system and flexible requirements, including SDG&E, the Western Power Trading Forum, Middle River Power, the Independent Energy Producers Association, NRG and others.<sup>19</sup> The Commission concluded that it would not “adopt multi-year requirements for flexible and system RA in this proceeding *at this time*...”<sup>20</sup> It made clear, however, that “[g]oing forward, the Commission may consider an expansion of multi-year requirements to flexible and/or system RA.”<sup>21</sup>

The Commission again observed in its Track 2 decision, D.19-02-022, that several parties presented proposals that supported “expanding multi-year and/or central procurement to system and flexible requirements....”<sup>22</sup> The Commission stated further that “the RA procurement issues observed thus far pertain to local RA and therefore, expansion to flexible and system RA is premature and needs to be fully explored.”<sup>23</sup> Thus, while declining to adopt a broader multi-year RA program for the time being, the Commission concluded:

[T]here may be potential benefits to expanding multi-year requirements to system and flexible RA, and [we] will continue to monitor and evaluate the multi-year local RA program to consider expansion to flexible and/or system RA in the future.<sup>24</sup>

In short, while the Commission has not yet adopted a multi-year system and/or flexible RA program, the contention that the inclusion of this feature in the Settlement Agreement “violates Rule 12.1(a) by addressing issues outside the scope of Track 2 of the proceeding”<sup>25</sup> ignores the substantial consideration the issue has had throughout the proceeding.

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<sup>19</sup> D.18-06-030 at 26-27.

<sup>20</sup> *Id.* at 28.

<sup>21</sup> *Id.*

<sup>22</sup> D.19-02-022 at 33.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 34.

<sup>25</sup> *See, e.g.*, SCE Comments at 14-15; PG&E Comments at 7-9.

The Settling Parties respectfully submit that, despite the Commission’s past reticence, the time has come to expand the multi-year local RA program to include system and flexible RA. The CAISO’s comments echo this sentiment, focusing almost exclusively on the benefit of the Settlement Agreement’s multi-year system and flexible RA requirements.<sup>26</sup> As the CAISO explains:

Recent developments in this proceeding and the Commission’s Integrated Resource Planning (IRP) proceeding demonstrate the need for system and flexible capacity forward procurement requirements. On September 12, 2019, the Commission issued a Proposed Decision highlighting potential system resource adequacy shortages beginning in 2021. The potential system shortages were not addressed by the current resource adequacy construct because it fails to consider system needs beyond the next year. The Settlement Agreement would provide a significant first step toward ensuring near-term needs by requiring system and flexible resource procurement obligations three-years forward.<sup>27</sup>

Indeed, in the context of the system RA shortage forecasted for 2021-2023 in the IRP proceeding, extending multi-year requirements to system and flexible RA could facilitate the retention of resources on the brink of contract expiration or retirement that do not have local RA value.

SCE contests these conclusions, arguing that “‘locking in’ system and flexible RA capacity three years forward ...is problematic.”<sup>28</sup> SCE seems to argue, based on very preliminary statements by the CAISO in R.16-02-007,<sup>29</sup> that the value for resources may change depending upon how requirements are measured in the future. The Settling Parties agree that the CAISO has introduced uncertainty regarding future system RA requirements, and the CAISO is

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<sup>26</sup> CAISO Comments at 2-3.

<sup>27</sup> *Id.*

<sup>28</sup> SCE Comments at 21.

<sup>29</sup> SCE comments at 21, referring to Reply Comments of the California Independent System Operator Corporation, R.16-02-007, August 12, 2019.

also engaged in an initiative to modify the flexible RA framework.<sup>30</sup> The Settlement Agreement, however, does not attempt to define how requirements will be set or what products will meet those requirements. Moreover, parties should reasonably expect that these issues will be addressed before the 2022 compliance year – the first delivery year for which the RA-CPE framework would be implemented. For these reasons, the Commission should reject the “scope” concerns cited by PG&E and SCE as misplaced.

### **III. THE SETTLEMENT AGREEMENT COMPORTS WITH STATE LAW AND MAINTAINS THE STATE’S CENTRAL ROLE IN ENSURING RELIABILITY**

#### **A. The Settlement Agreement is Consistent with the Statutory Authority Conferred to the Commission by Section 380**

The Settlement Agreement provides expressly its intent to implement the RA-CPE framework under Public Utilities Code Section 380, which grants the Commission authority to oversee reliability through the state-administered resource adequacy program. The Settlement Agreement provides:

The RA-CPE will implement a centralized resource adequacy mechanism under the authority delegated to the Commission pursuant to Public Utilities Code Section 380(i) or any subsequently enacted statute conferring such authority.<sup>31</sup>

More specifically, the Settlement Agreement implements the Commission’s authority under Section 380(i), which authorizes the Commission to “consider a centralized resource adequacy mechanism among other options” in implementing its RA authority.<sup>32</sup> Finally, the Settlement Agreement maximizes the ability of CCAs to procure RA on behalf of their load, as required by §§ 380(a)(5) and (g)(5).

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<sup>30</sup> See *Resource Adequacy Enhancements, Second Revised Straw Proposal*, at 57-58.

<http://www.caiso.com/Documents/SecondRevisedStrawProposal-ResourceAdequacyEnhancements.pdf>

<sup>31</sup> Joint Motion, Appendix A at 2.

<sup>32</sup> Cal. Pub. Util. Code §380(i).

Several parties challenge this conclusion. The American Wind Energy Association of California (“AWEA-CA”) and the Large-Scale Solar Association (“LSA”) claim that it is unclear how the selection of the resources to meet the Collective Residual RA Requirements will comport with § 380.<sup>33</sup> The Joint DR Parties assert that the Settlement Agreement ignores provisions of § 380.<sup>34</sup> They claim that no provision of the Settlement Agreement ensures any mandated outcomes, and none of the mandatory requirements of § 380 are guaranteed by any provision of the Settlement Agreement or proposed RA-CPE framework.<sup>35</sup> These parties’ concerns appear to focus on the provisions of § 380(b).<sup>36</sup>

Section 380(b) requires the Commission to “ensure the reliability of electrical service in California while advancing, to the extent possible, the state's goals for clean energy, reducing air pollution, and reducing emissions of greenhouse gases”<sup>37</sup> and to meet other specified objectives. AWEA-LSA focus their needs on the implementation of the “Loading Order” by the CPE.

The Joint DR Parties and AWEA-LSA identify no specific impediments that will prevent the RA program, as enhanced by the RA-CPE framework, from meeting the objectives stated in Section 380(b). They only assert that there has been no demonstration of whether and how the RA-CPE framework will meet these objectives or, in the case of the Joint DR Parties, that the Settlement Agreement will guarantee the objectives are met. As an initial matter, no framework can “guarantee” that the statutory objectives will be met. However, nothing in the Settlement Agreement would prevent the achievement of these objectives. The aforesaid parties’ concerns

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<sup>33</sup> Comments of the American Wind Energy Association of California and Large-Scale Solar Association (AWEA-LSA Comments) at p. 4.

<sup>34</sup> Comments of Joint DR Parties (Joint DR Comments) at 3.

<sup>35</sup> Id. at 8.

<sup>36</sup> AWEA-LSA Comments at 5; Joint DR Comments at 8-9.

<sup>37</sup> Cal. Pub. Util. Code §380(b).

are thus best be addressed through the RA-CPE resource selection criteria, which the Settlement Agreement reserves for further development through a public stakeholder process.<sup>38</sup>

**B. The Settlement Agreement Does Not Delegate Commission Jurisdiction to the RA-CPE**

Parties challenge the Settlement Agreement on grounds that the Settlement Agreement unlawfully delegates Commission jurisdiction to the RA-CPE and fails to provide sufficient Commission oversight. However, their positions appear to stem to a large degree from a misapplication of the law giving the Commission authority to establish “just and reasonable” rates. In addition, the answer to their concerns will depend on the identity of the entity ultimately selected to act as the RA-CPE. What is appropriate oversight for a state-agency RA-CPE may not be the same oversight required in the case of, for example, a third-party RA-CPE. For these reasons, their criticisms are not grounds for rejection of the Settlement Agreement.

Some parties suggest that the Settlement Agreement unlawfully delegates the Commission’s authority to the RA-CPE.<sup>39</sup> SCE complains that “there is very little discussion of a Commission oversight process in the Settlement Agreement,” noting that the provisions instead point to coordination of the RA-CPE activities with the Commission, the CAISO, and the California Energy Commission (“CEC”).<sup>40</sup> PG&E asserts that the Settlement Agreement neglects to include oversight by the Commission over what is procured, asserting that “this lack of oversight would limit the state’s ability to implement state policy goals and reduce stakeholder

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<sup>38</sup> Joint Motion, Appendix A, §III.C.2.c. at 3.

<sup>39</sup> Public Advocates Office states: “allowing the CPE to determine whether costs above the Soft Offer Cap are reasonable would be an unlawful delegation of the Commission’s statutory obligation to determine that rates are just and reasonable.” Comments of the Public Advocates Office (Public Advocates Office Comments) at 7.

<sup>40</sup> SCE Comments at 31.

involvement in procurement decisions.”<sup>41</sup> The Public Advocates Office likewise argues that the Settlement Agreement “[f]ails to provide for sufficient oversight of the Central Procurement Entity (CPE) by the Commission.”<sup>42</sup> The Public Advocates Office cites insufficient oversight of contract costs, formation and administrative costs, and creditworthiness and collateral protocols.<sup>43</sup>

These parties start from the premise that heavy-handed cost and rate regulation of the RA-CPE is required – a premise that warrants reconsideration through an examination of the Commission’s authority under Sections 380 and 451. Section 451 confers the Commission authority to determine whether the rates and charges imposed by a *public utility* are just and reasonable.<sup>44</sup> Thus, unless the RA-CPE is deemed a public utility – a question that has not yet been broached – the Commission will, under current law, have no direct rate regulation authority over the RA-CPE. Moreover, nothing in § 380 extends the Commission’s rate authority to the rates paid by customers of CCAs or ESPs.<sup>45</sup> Section 380, instead, confers on the Commission authority to ensure reliability. In other words, it is the Commission’s business to ensure that LSEs obtain enough of the right types of capacity to ensure reliability; it is not within the Commission’s purview to oversee the prices at which LSEs meet their obligations, with the exception of public utilities. Thus, the notion that the Commission should maintain authority to oversee and approve the costs, rates and charges of the RA-CPE requires more extensive consideration.

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<sup>41</sup> PG&E Comments at 15.

<sup>42</sup> Public Advocates Office Comments at 1.

<sup>43</sup> *Id.* at 8.

<sup>44</sup> Cal. Pub. Util. Code §451.

<sup>45</sup> The Commission has no jurisdiction to regulate the rates that CCAs and ESPs charge their customers. For ESPs, this limitation on the Commission’s jurisdiction is codified in Public Utilities Code §394(f), which in pertinent part provides: “Nothing in this part authorizes the commission to regulate the rates or terms and conditions of service offered by electric service providers.”

In addition, the RA-CPE function is, to a large degree, self-regulating. It is up to local governments, in the case of CCAs, and sophisticated customers, in the case of ESPs, to evaluate the rates implemented by CCAs and ESPs to recover their allocated RA-CPE costs. If a CCA or an ESP, on behalf of its customers, believes that RA-CPE procurement costs are likely to be excessive, it can avoid those costs by self-procuring some or all its customers' RA needs. Likewise, the Commission could direct the IOUs to fully self-procure RA capacity to meet their bundled needs to minimize the need to pay RA-CPE procurement costs.

Even assuming, however, that the Commission has authority over the charges paid by LSEs to meet § 380 requirements, parties' criticisms are premature. The scope of any appropriate oversight will depend on the entity that performs the RA-CPE role. If, for example, the RA-CPE is a state agency, coordination may be more appropriate than "oversight." Alternatively, if the IOU fulfills the RA-CPE role, direct regulation will be required because the entity is a public utility; even more will be required because the IOU competes in both the wholesale and retail markets with other generators who will sell into the RA-CPE solicitations and other LSEs on whose behalf the RA-CPE will procure. Finally, if the RA-CPE is a third-party, competitively neutral entity, another oversight paradigm may be appropriate. Consequently, it is important to first identify the RA-CPE before establishing an oversight framework.

In summary, the question of oversight, while understandably important, is left open by the Settlement Agreement for consideration following selection of the entity (or entities) that will be RA-CPE(s). Therefore, the Commission should not view the Settlement Agreement as being deficient for not fully addressing what are necessarily still unresolved RA-CPE oversight issues.

**C. The Settlement Agreement Does Not Prevent Selecting an IOU as RA-CPE, and Such Selection Is Not the Sole Avenue to Avoiding FERC Jurisdiction**

The Public Advocates Office asserts that the RA-CPE framework could prevent the Commission from adopting one or more of the utilities as a CPE, which is an action it suggests is necessary to avoid inviting Federal Energy Regulatory Commission (“FERC”) involvement. It bases its argument on a provision requiring an LSE that recovers costs through consolidated billing to recover RA-CPE costs as a part of the generation component of the LSE’s rates.<sup>46</sup> From there the Public Advocates Office jumps wildly, without connecting the dots, to the conclusion that somehow this Settlement Agreement will prevent the Commission from selecting an IOU as RA-CPE. It then takes another flying leap to the conclusion that not relying on an IOU as RA-CPE will invite FERC involvement.<sup>47</sup> Finally, it concludes that “constraints on cost recovery requirements and related impacts on CPE selection are not in the public interest.”<sup>48</sup>

Nothing in the Settlement Agreement expressly precludes selecting an IOU as the RA-CPE. To the extent that there are hurdles to such a selection, however, they lie in, among other things, the reasonable and, in the Settling Parties’ view, necessary requirement that the RA-CPE be “competitively neutral”<sup>49</sup> and not, as the Public Advocates Office suggests, in the Settlement Agreement’s cost allocation provisions. Thus, while other concerns may prevent the selection of an IOU as RA-CPE, the fact that the IOU would be required to include the RA-CPE costs in the generation rate of its component would have no apparent bearing on its suitability for the job.

It is also critical to note that placing an IOU in the RA-CPE role is *not* the only way in which to maintain the state’s jurisdiction over its function. The Public Advocates Office, again,

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<sup>46</sup> Public Advocates Office Comments at 12.

<sup>47</sup> *Id.* at 13.

<sup>48</sup> *Id.*

<sup>49</sup> Joint Motion, Appendix A, § II.D. at 2.

fails to explain why an IOU is the only option for the RA-CPE that will not invite FERC jurisdiction. The Settling Parties submit that whether FERC intervenes in California’s RA program will depend not on the entity serving as RA-CPE, but rather on *how the program is designed*.

FERC has permitted state programs in several contexts where state and federal jurisdiction overlaps. In Order 719, FERC required regional transmission organizations and independent system operators to permit “a qualified aggregator of retail customers to bid demand response on behalf of retail customers” directly into organized, FERC regulated markets.<sup>50</sup> Recognizing the interface of the program with retail jurisdiction, FERC allowed states to opt out. It noted that its intent “was not to interfere with the operation of successful demand response programs, place an undue burden on state and local retail regulatory entities, or to raise new concerns regarding federal and state jurisdiction...”<sup>51</sup> Likewise, FERC established a framework for “consideration of transmission needs driven by Public Policy Requirements in the local and regional transmission planning processes,”<sup>52</sup> including, for example, renewable portfolio standards.<sup>53</sup>

The critical issue with respect to the risk of FERC intervention is whether the adopted program is “tethered” to or directly impacts participation in the wholesale market. In *FERC v. Elec. Power Supply Ass’n*,<sup>54</sup> the Supreme Court observed that the Federal Power Act (“FPA”) obligates FERC to oversee “[a]ll rates and charges made, demanded, or received by any public utility for or in connection with’ interstate transmissions or wholesale sales—as well as “all

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<sup>50</sup> *Order 719*, 125 F.E.R.C. ¶61,071, at \*459-60 (Oct. 17, 2008) (amending 18 C.F.R § 35.28).

<sup>51</sup> *Id.* at \*128.

<sup>52</sup> *Order 1000*, 136 F.E.R.C. ¶61,051, at \*217 (July 21, 2011).

<sup>53</sup> *Id.* at \*81.

<sup>54</sup> 136 S.Ct. 760 (2015).

rules and regulations *affecting* or pertaining to such rates or charges.”<sup>55</sup> The Court also approved a “common-sense” construction of the FPA’s language which “limit[s] FERC’s ‘affecting’ jurisdiction to rules or practices that ‘*directly* affect the [wholesale] rate.’”<sup>56</sup>

Case law establishes rough guidelines for what constitutes a “direct” impact on the wholesale market. In *Hughes v. Talen Energy Mktg., LLC.*,<sup>57</sup> the Supreme Court ruled that a program designed by the State of Maryland to provide subsidized price support to encourage development of new resources was preempted by federal law.<sup>58</sup> The program provided “subsidies, through state-mandated contracts, to a new generator, but condition[ed] receipt of those subsidies on the new generator selling capacity into a FERC-regulated wholesale auction.”<sup>59</sup> FERC sought to preempt the program due to its effect on wholesale markets, noting the tension with state policy:

Our intent is not to pass judgment on state and local policies and objectives with regard to the development of new capacity resources, or unreasonably interfere with those objectives. We are forced to act, however, when subsidized entry supported by one state’s or locality’s policies has the effect of disrupting the competitive price signals that PJM’s [capacity auction] is designed to produce, and that PJM as a whole, including other states, rely on to attract sufficient capacity.<sup>60</sup>

The Fourth Circuit affirmed FERC’s conclusion, reasoning that the program “functionally sets the rate that [generator] receives for its sales in the PJM auction,” which is a FERC-approved

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<sup>55</sup> *Id.* at 773 (quoting 16 U.S.C. § 824d(a)) (emphasis added).

<sup>56</sup> *Id.* at 774 (quoting *Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395, 403 (D.C. Cir. 2004)).

<sup>57</sup> 136 S.Ct. 1288 (2016).

<sup>58</sup> *Id.* at 1290.

<sup>59</sup> *Id.* at 1293.

<sup>60</sup> *Id.* at 1296 (citing *PJM Interconnection*, 137 F.E.R.C. ¶61,145, 61,747 (Nov. 17, 2011)).

organized market.<sup>61</sup> The Supreme Court agreed: “By adjusting an interstate wholesale rate, Maryland’s program invades FERC’s regulatory turf.”<sup>62</sup>

State programs that provide support for generators *separate from and independent of market operations* have been found not preempted by federal law. “State law claims are not preempted...where the action does not relate to wholesale sales in interstate commerce...or where claims do not require the court to second-guess rates or tariffs set by FERC.”<sup>63</sup> For example, *Electric Power Supply Ass’n. v. Star*<sup>64</sup> addresses an Illinois program to provide support for nuclear plants. Under the program, nuclear plants received emission credits which other types of generation were required to purchase. The price of the credit varied based on wholesale market prices. Differentiating from the fatal feature of the Maryland program, the Seventh Circuit allowed the program, finding that the subsidy did not depend on participation in the wholesale market, or directly affect wholesale prices:

To receive a credit, a firm must *generate* power, but how it sells that power is up to it. It can sell the power in an interstate auction but need not do so. It may choose instead to sell power through bilateral contracts with users (such as industrial plants) or local distribution companies that transmit the power to residences.<sup>65</sup>

In *Coalition for Competitive Electricity v. Zibelman*,<sup>66</sup> the State of New York enacted a similar zero-emissions credit (“ZEC”) program providing financial support to nuclear plants independent of their participation in wholesale auctions. The Second Circuit found the program was not preempted because its effect on wholesale markets was indirect.<sup>67</sup> The program also

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<sup>61</sup> *Id.* (quoting *PPL EnergyPlus, LLC v. Nazrian*, 753 F.3d 467, 476-77 (4th Cir. 2014)).

<sup>62</sup> *Id.* at 1297.

<sup>63</sup> *E. & J. Gallo Winery v. EnCana Energy Servs.*, 2005 U.S. Dist. LEXIS 24240, at \*26-27 (Sept. 30, 2005).

<sup>64</sup> 904 F.3d 518 (7th Cir. 2018).

<sup>65</sup> *Id.* at 523-24.

<sup>66</sup> 906 F.3d 41 (2d Cir. 2018).

<sup>67</sup> *Id.* at 54.

provided for credits to be given to resources with no carbon emissions and sold to those with emissions. The court acknowledged that the additional revenue from the sale of the credit may allow the resource to submit a lower bid in a wholesale market. It held, however: “Even though the ZEC program exerts downward pressure on wholesale electricity rates, that incidental effect is insufficient to state a claim for field preemption under the FPA.”<sup>68</sup> Relying on language in *Hughes*, the court found FERC had no jurisdiction because there was no impermissible “tether” between the ZEC program and wholesale market participation.

The Public Advocates Office has not identified any characteristic of the RA-CPE framework that would “tether” it to or directly impact wholesale market participation. The Public Advocates Office’s contention is thus groundless.

**D. The Settlement Agreement’s Provisions for Recovery of RA-CPE Costs in the Event of LSE Default Are Consistent with the Law**

The Settlement Agreement makes the RA-CPE “revenue neutral” and thus socializes the costs of default among LSEs on whose behalf the RA-CPE procures RA.<sup>69</sup> Some parties object to the methodology applied to ensure RA-CPE cost recovery in the event of an LSE default. SCE asserts that allocating costs due to an LSE’s default to the remaining LSEs is inappropriate and would result in unlawful cost shifting among customers.<sup>70</sup> PG&E claims that the proposed allocation methodology is contrary to equitable principles of cost allocation.<sup>71</sup> The Public Advocates Office believes that the methodology could lead to inequitable ratepayer cost recovery.<sup>72</sup>

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<sup>68</sup>

*Id.*

<sup>69</sup> Joint Motion, Appendix A, § VII.E.2.

<sup>70</sup> SCE Comments at 6.

<sup>71</sup> PG&E Comments at 13-14.

<sup>72</sup> Public Advocates Office Comments at 11-12.

As a preliminary matter, the Settlement Agreement’s proposed methodology is consistent with the CAISO’s treatment of the costs of defaults for payment of backstop procurement.<sup>73</sup> In addition, both SCE and PG&E supported this approach in prior stakeholder processes before the CAISO.<sup>74</sup> Accordingly, the Commission should dismiss these criticisms as unwarranted in its evaluation of the Settlement Agreement.

#### **IV. THE SETTLEMENT AGREEMENT’S PROVISIONS REQUIRING THE RA-CPE TO DEMONSTRATE COLLECTIVE COMPLIANCE WITH RA REQUIREMENTS FURTHERS RELIABILITY**

Some parties raise concerns with the Settlement Agreement’s shift from individual LSE requirements to a collective RA-CPE requirement.<sup>75</sup> To the contrary, this feature of the RA-CPE framework is an improvement over the status quo. Placing a Collective Residual Requirement on the RA-CPE leaves the final responsibility (before CAISO backstop) to a single entity with the authority and tools necessary to get the job done. Moreover, the argument rings particularly hollow when considering the full procurement or hybrid procurement models advocated by PG&E and SCE would have no individual requirements for local RA.

The California Large Energy Consumers Association (“CLECA”) contends that by allowing an LSE to rely on the RA-CPE for all of its procurement, the Settlement Agreement violates § 380(b)(5) by reducing CCAs’ ability “to choose their generation resources and

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<sup>73</sup> See Section 43A.8 of the CAISO Fifth Replacement Electronic Tariff.

<sup>74</sup> Notably, both PG&E and SCE are parties to a settlement in FERC Docket No. EL09-62 which sets forth how defaults in the CAISO’s markets are to be allocated. CAISO market defaults are allocated broadly to other participants in the CAISO market; similarly, the Settlement Agreement proposes to allocate LSE default costs to other LSEs. While parties argue that it may not be “equitable” to allocate one party’s default costs to other parties, such socialized allocation has precedent and may be the best way to keep credit risks and costs low.

<sup>75</sup> Comments of Vistra Energy Corp. on the Settlement Agreement for a “Residual” Central Procurement Entity Structure for Resource Adequacy, (Vistra Comments) at 3-4. SCE also contests the elimination of the individual LSE requirements, but its grounds the argument in concerns regarding oversight, which are addressed in Section V.C.

impacting the Commission’ policy of customer choice.”<sup>76</sup> CLECA further contends that “it would homogenize the resource mix and eliminate the opportunity for cost differences among LSEs,” which CLECA contends is contrary to the law.<sup>77</sup>

The Settling Parties fully recognize the need to protect LSEs’ choice of resources for serving their customers; in fact, the Settlement Agreement is designed to do just that. An LSE may elect to self-procure all or any portion of its needs, consistent with § 380(b)(5). The Settlement Agreement does not undermine that election in any way. Moreover, if CLECA believes eliminating this election would be unlawful, then the full and hybrid procurement models favored are indefensible in that they would completely undermine the ability of LSEs to self-procure the local resources that they might prefer. Choice and individual LSE responsibility are removed under those models, just as CLECA fears.

Vistra raises the concern that this provision will result in LSEs leaning on the RA-CPE for any shortfall, knowing that they “will not be exposed to RA-CPE costs greater than the soft offer cap.”<sup>78</sup> Vistra further concludes that procurement price cap is unlikely to provide incentives to develop new resources.<sup>79</sup> As an initial matter, the RA-CPE may pay more than the soft-offer cap if circumstances warrant;<sup>80</sup> an LSE thus cannot assume that reliance on the RA-CPE will necessarily limit its costs. Moreover, as discussed in Section V.E below, neither the RA-CPE framework outlined in the Settlement Agreement nor, for that matter, the RA Program, is intended to be the primary tool to provide incentives for new resources.

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<sup>76</sup> Response of the California Large Energy Consumers Association Opposing the Joint Motion for Adoption of a Settlement Agreement (CLECA Comments) at 7.

<sup>77</sup> *Id.* at 7-8.

<sup>78</sup> Vistra Comments at 4.

<sup>79</sup> *Id.*

<sup>80</sup> Joint Motion, Appendix A, § III.C.6. at 4.

**V. THE SETTLEMENT AGREEMENT IS A PARTIAL SETTLEMENT, AND THE PRESENCE OF OPEN ISSUES DOES NOT DETRACT FROM ITS VALUE IN ADVANCING THE COMMISSION’S GOAL OF IMPLEMENTING A CENTRAL PROCUREMENT MECHANISM**

A number of parties raise concerns that the Settlement Agreement does not answer all the questions attendant to a central procurement mechanism. For example, SCE complains that the Settlement Agreement “does not include all elements of a workable implementation solution for the central procurement of multi-year local RA, or appropriately address all known challenges to the local RA program.”<sup>81</sup> The Settling Parties note that open issues will not change the fundamental structure of the RA-CPE framework regardless of their resolution. The Settling Parties have identified issues that will require either further collaboration among parties or a Commission decision.<sup>82</sup> The fact that issues remain thus should not detract from the value of the Settlement Agreement in advancing the Commission’s goal to implement a central procurement mechanism.

**A. The Settlement Agreement Substantially Addresses the Issue Categories Identified in the Track 2 Decision**

SCE recites the issue categories identified in D.19-02-022 for resolution in any central buyer proposal.<sup>83</sup> As discussed in Section I of these Reply Comments, the Settlement Agreement meets most of these requirements in greater detail than any other proposal brought to the Commission to date.

The Settlement Agreement makes clear the scope of procurement, including its residual nature,<sup>84</sup> the responsibility for ensuring that aggregate RA requirements are satisfied,<sup>85</sup> the

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<sup>81</sup> SCE Comments at 30 (text case modified).

<sup>82</sup> Joint Motion at 17-18.

<sup>83</sup> SCE Comments at 30 (citing D.19-02-022 at OP 4).

<sup>84</sup> Joint Motion, Appendix A, § III.A. at 2.

<sup>85</sup> *Id.*, § III.B. at 3.

products to be procured by the RA-CPE,<sup>86</sup> and responsibility for procurement to meet collective deficiencies.<sup>87</sup> The Settlement Agreement further provides a detailed cost allocation mechanism that could be implemented with minimal refinement.<sup>88</sup> In addition, the Settlement Agreement provides a detailed mechanism and process for LSE and CPE procurement,<sup>89</sup> including a price cap for RA-CPE procurement that will mitigate seller market power.<sup>90</sup> Finally, the Settlement Agreement also provides a very detailed timeline for the RA process, identifying dates for every key activity.<sup>91</sup>

However, certain issues were not addressed, including the RA-CPE's identity and detailed resource selection criteria, because the Settling Parties themselves had polarized views on these elements. Therefore, in order to reach consensus in the short time allotted by D.19-02-022, the Settling Parties focused on the primary components of the procurement framework that resolved the majority of issues. The Settling Parties explain below why the issues were left for further stakeholder collaboration or Commission actions. In addition, the discussion addresses market power mitigation tools, which the Settling Parties submit have been addressed adequately to the extent such tools fall within the Commission's jurisdiction.

**B. The Identity of the RA-CPE Could Not Be Resolved in the Time Provided Due to the Polarization of Views**

The most significant open issue, as noted by TURN, SCE, and AWEA-LSA, is the identity of the RA-CPE.<sup>92</sup> The Settling Parties recognized early in their discussions, however,

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<sup>86</sup>

*Id.*

<sup>87</sup>

*Id.* § III.A. at 2.

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*Id.*, § VII. at 8 and Appendix B.

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*Id.*, § III.C. at 3.

<sup>90</sup>

*Id.*

<sup>91</sup>

*Id.*, Appendix A.

<sup>92</sup>

TURN Comments at 1; SCE Comments at 19; AWEA-LSA Comments at 3.

that they would be unable to agree on the identity of the RA-CPE; some parties favor a state governmental entity and others favor a third-party entity. Recognizing the unlikely resolution of this issue before the Commission’s year-end target for adoption of a central procurement mechanism, the Settling Parties agreed to leave this issue open, as specified in Section C.7. of the Settlement Agreement.<sup>93</sup> And while implementation details may differ depending upon the ultimate choice of RA-CPE, the framework proposed by the Settlement Agreement can be implemented whether the RA-CPE is a state governmental entity, a third-party entity or an IOU. Consequently, while the Commission and, potentially, the Legislature will need to designate an RA-CPE, the Settling Parties’ inability to resolve this issue does not detract from the legitimacy or value of the Settlement Agreement.

**C. Protocols for RA-CPE Oversight Will Depend Upon the Identity of the RA-CPE**

SCE complains that “there is very little discussion of a Commission oversight process in the Settlement Agreement,” noting that the provisions instead point to coordination of the RA-CPE activities with the Commission, the CAISO, and the California Energy Commission (“CEC”).<sup>94</sup> The Public Advocates Office likewise argues that the Settlement Agreement “[f]ails to provide for sufficient oversight of the Central Procurement Entity (CPE) by the Commission.”<sup>95</sup> The Public Advocates Office cites insufficient oversight of contract costs, formation and administrative costs, and creditworthiness and collateral protocols.<sup>96</sup> Both parties start from the premise that cost and rate regulation of the RA-CPE is required – a premise that warrants examination. Moreover, the Settlement Agreement is necessarily light on details with

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<sup>93</sup> Joint Motion, Settlement Agreement at 5.

<sup>94</sup> SCE Comments at 31.

<sup>95</sup> Public Advocates Comments at 1.

<sup>96</sup> *Id.* at 8.

respect to the RA-CPE's oversight in large part because the extent and nature of such oversight will depend upon whether the RA-CPE is a "sister" state agency, a third-party entity, or an IOU.

Assessing the need for RA-CPE oversight requires an examination of the Commission's obligations under § 380. While the Commission has jurisdiction over services provided and rates charged by the IOUs, its RA authority does not extend that same jurisdiction to services provided and rates charged by a CCA or an ESP. The Commission's primary role in the state's RA program is to make sure that all LSEs procure enough of the right types of capacity to ensure reliability. While it is the Commission's responsibility to ensure that the IOUs' RA costs are just and reasonable, but the exercise of that authority falls under § 451 and § 380 (g). In other words, it is the Commission's business to ensure that LSEs obtain the right type of capacity to ensure reliability; it is not the Commission's business to oversee the prices at which LSEs meet their obligation, with the exception of the IOUs. Thus, the notion that the Commission should maintain authority to oversee and approve the costs, rates and charges of the RA-CPE is suspect.

Moreover, the RA-CPE's procurement costs are, in effect, self-regulating. If an LSE believes that the RA-CPE's procurement costs are excessive or are likely to be excessive, it can avoid those costs by self-procurement. Indeed, the Commission could direct the IOUs to fully self-procure RA to meet their needs to minimize the need to pay these costs. (As for RA-CPE administrative costs, the workshop discussion revealed that such costs are likely to be largely the same regardless of what entity fulfills the RA-CPE role, except only perhaps for an already existing state agency.) The Settlement Agreement provides opportunities for the Commission to review the effectiveness of the procurement, two years after inception, as well as no later than five years to review the need for the RA-CPE in the future. Parties would have opportunities to provide feedback to the Commission with regards to the administrative costs at those times.

Even assuming, however, that the Commission had authority over the charges paid by LSEs to meet § 380 requirements, SCE's and the Public Advocate's Office's criticisms are premature. The scope of any appropriate oversight will depend to a large degree on the entity that performs the RA-CPE role. If, for example, the RA-CPE is a state agency, coordination may be more appropriate than "oversight." Alternatively, if an IOU fulfills the RA-CPE role, a more expansive hand of regulation may be required due to the fact the IOU competes with the entities on behalf of whom it would be procuring RA. Finally, if the RA-CPE is a third-party entity, another oversight paradigm may be appropriate. Consequently, it is important to first identify the RA-CPE before establishing an oversight framework.

**D. The Settlement Agreement Recognizes That Resource Selection Criteria Will Benefit from a Broader Range of Stakeholder Input**

Parties also raised the absence of criteria for the RA-CPE's selection of resources to meet the RA requirements.<sup>97</sup> CESA raises its concern that:

[T]he Joint Settlement Agreement has structured the centralized RFO process for residual RA needs to only focus on least-cost procurement of reliability resources at or below the soft-offer cap set for the Capacity Procurement Mechanism ("CPM"). The detailed evaluation criteria are not provided, though the Joint Settlement Agreement describes how the CPE should take into "account" other factors such as state energy policy objectives.<sup>98</sup>

The Settling Parties agree that transparent selection criteria will be important in ensuring the success of the RA-CPE framework. The Settling Parties concluded, however, that broader stakeholder input was needed to resolve the issue than was possible to accommodate in the time provided, and that the criteria need not be developed prior to adoption of the RA-CPE structure envisioned by the Settlement Agreement. Therefore, the Settlement Agreement expressly

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<sup>97</sup> Comments of California Energy Storage Alliance (CESA Comments) at 4.

<sup>98</sup> *Id.*

provides for the development and adoption of selection criteria “by the Commission through a public process.”<sup>99</sup> That process, which can be implemented well in advance of the first RA-CPE procurement solicitation, will provide parties the opportunity to propose criteria that will help ensure that the RA-CPE’s procurement actions are consistent with the state’s energy policies.

## **VI. OPPOSING PARTIES’ PURPORTED CONCERNS REGARDING THE ROLE OF THE RA-CPE ARE NOT VALID**

Parties opposed to the Settlement Agreement express concern that under the framework proposed in the Settlement Agreement, LSEs would no longer have the obligation to procure capacity to meet the reliability needs of the grid because the Settlement Agreement has shifted this obligation to the RA-CPE.<sup>100</sup> Parties suggest further that the RA-CPE proposal is not sufficiently coordinated with the IRP proceeding. These concerns are misplaced. Broadly speaking, the proposed RA-CPE framework is conceptually no better or worse than the full and hybrid procurement models in this regard, and it in no way interferes with the Commission’s efforts in the context of the IRP proceeding.

Parties’ purported objection to the role of the RA-CPE makes little sense given that both the full and hybrid procurement frameworks reflect the philosophy that shifting procurement responsibility entirely to a central procurement entity is the optimal approach to ensuring reliability. Indeed, under PG&E’s full procurement model, “the CPE has *sole* responsibility for meeting local reliability compliance requirements on behalf of all LSEs.”<sup>101</sup> As PG&E explains, “[u]nder a Full Procurement Model, LSEs are not given local RA requirements, and the entire quantity of needed local RA is procured by a CPE.”<sup>102</sup> Likewise, the hybrid model eliminates

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<sup>99</sup> Joint Motion, Appendix A, § III.C.2. at 3.

<sup>100</sup> See, e.g. PG&E Comments at 9; SCE Comments at 20.

<sup>101</sup> Joint IOU Informal Report, Appendix 1-13 (emphasis added).

<sup>102</sup> PG&E reply comments to parties’ proposals, dated August 8, 2018, at 1-2 Line 8.

mandatory local RA requirements for LSEs.<sup>103</sup> Thus, *all* of the currently-active CPE proposals in this proceeding incorporate the basic concept of the CPE, rather than LSEs, having primary responsibility for procuring the resources needed to ensure grid reliability. The Settlement Agreement also incorporates this concept, but leaves intact the § 380 requirements to maximize LSE procurement autonomy.

While the proposed RA-CPE framework would make the RA-CPE primarily responsible for ensuring system reliability, it does not interfere with LSEs' ability to self-procure. The Settlement Agreement framework is limited in scope to the method and amount of capacity the RA-CPE must procure in order to meet the multi-year forward reliability needs *after* LSEs have elected to show the capacity they have already self-procured consistent with their IRP plans approved or certified by the Commission. If an LSE procures more RA than its share of the Collective RA Requirement due to changes in its load forecast, then the LSE may transact bilaterally with other LSEs or offer its excess capacity into the RA-CPE's annual solicitation. If an LSE was unable to procure sufficient capacity bilaterally, then the RA-CPE in its annual solicitation would attempt to procure capacity on the LSE's behalf in order to meet the LSE's share of the Collective RA Requirement.

The full procurement model, on the other hand, eliminates LSE procurement autonomy, in violation of § 380 (b)(5), given the risk that the CPE will not select resources owned or contracted by LSEs. Under the full procurement model, if the CPE does not select an LSE's resources to meet the Local reliability needs, the LSE can use the Local resource only to meet its System and Flexible capacity needs. This increases the LSE's cost of System and Flexible procurement because it relegates premium Local products to meeting the System/Flexible

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<sup>103</sup> Joint IOU Informal Report, Appendix 1-17.

obligations. In addition, under the full procurement model, the LSE would be allocated additional costs by the CPE for the portion of its Local capacity that was not selected. The stranded cost risk inherent in the Full procurement model could dis-incentivize LSEs from developing Local resources entirely.

Some parties argue that the RA-CPE procurement price cap “is insufficient to create incentives for the entry of new resources ....”<sup>104</sup> The Settling Parties agree that the Settlement Agreement alone, with its three-year term and procurement price cap, may be insufficient to bring a significant amount of new resources to the market. However, the need for new resources is an issue for the IRP proceeding, and the design of a mechanism to incent the development of new resources is more properly a task for that proceeding. Consequently, the Settlement Agreement expressly defers to the IRP “a process for planning for the development of new RA resources needed for reliability.”<sup>105</sup> The Settling Parties note, however, that implementation of the stable forward procurement mechanism proposed in the Settlement would facilitate development of new resources by providing a mechanism for parties to efficiently transact their long and short positions on a rolling three-year forward basis.

Finally, the proposed RA-CPE does not interfere in any way with the IRP process or LSEs’ development of their long-term resource portfolios. All LSEs must submit individual integrated resource plans to the Commission on a biennial basis. The IRPs present analysis based upon approved resource assumptions that demonstrates a path to achievement of the State’s carbon mitigation goals in a reliable and cost-effective manner through reliance on existing and/or new resources. The Settlement Agreement makes no change to this requirement. Indeed, the multi-year forward central procurement function contemplated in the RA-CPE aligns

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<sup>104</sup> Powerex Comments at 5-6. *See also* Vistra Comments at p. 2-3, Joint DR Comments at 8-9.

<sup>105</sup> Joint Motion, Appendix A, § VI.H. at 7.

closely with the “backstop” mechanism currently under consideration in the “procurement track” of the IRP proceeding.

PG&E correctly notes that the Commission has expressed concerns regarding system reliability in the IRP proceeding.<sup>106</sup> In D.19-04-040, the Commission identified a need for “mechanisms for ‘backstop’ procurement, in the event that an individual LSE or LSEs fail to procure the resources identified in their IRPs as necessary to fulfill their responsibilities for procurement.”<sup>107</sup> The Commission notes further that it intends to coordinate this “backstop” function with the instant RA proceeding. Thus, the RA-CPE does not impede the conduct of the IRP proceeding or prevent adoption of requirements related to long-term procurement of capacity resources. Rather, if anything, the RA-CPE could serve as a template for the IRP backstop mechanism in the future.

**A. The Proposed RA-CPE Framework Does Not Increase the Potential for Inefficient Procurement**

Both PG&E and SCE assert that the Residual procurement framework proposed in the Settlement Agreement causes procurement inefficiency, pointing to the fact that the proposed Residual procurement model counts LSEs’ Shown RA capacity on a megawatt-for-megawatt basis without accounting for “effectiveness.” PG&E and SCE suggest different meanings for the term “effectiveness,” each of which is addressed below.

PG&E defines the term “‘effective’ as a resource with high availability and ‘ineffective’ as one with low availability.”<sup>108</sup> Based on this definition, the Settling Parties understand PG&E to be referring to resources with use-limitations or limited duration. The fundamental question that is at the root of PG&E’s concern is whether RA counting rules are accurate. For example, in

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<sup>106</sup> PG&E Comments at 9-10.

<sup>107</sup> D.19-04-040 at 139.

<sup>108</sup> PG&E Comments at 10, fn 27.

Track 3 of the RA proceeding as well as more recent RA working group meetings held September 5-6, 2019, PG&E has proposed to modify the qualifying capacity (“QC”) counting rules for hydro resources in order to better reflect the resource’s availability.<sup>109</sup> PG&E has explained that the current QC methodology does not accurately reflect the resources’ actual production amount because it does not capture the variability of annual “hydrological conditions, weather patterns, [FERC] licensing, storage levels and upstream and downstream powerhouses...”<sup>110</sup>

The Settling Parties agree that accurate counting methodologies are crucial to ensure that both LSEs and the RA-CPE procure sufficient capacity to meet reliability needs. This is an issue that must be addressed in the RA proceeding to ensure that “effective” resources are developed to meet long term reliability needs. In addition, the RA proceeding should continue to refine the methodologies to ensure accurate counting of resources. More broadly, however, the Settling Parties note that this issue is not unique to the residual procurement model and would apply to both the full and hybrid procurement models. PG&E provides no evidence that the full procurement model would be able to address issues with RA effectiveness any better than any other model. PG&E’s assumption that under the full procurement model, the CPE would be able to limit procurement to highly-available resources and meet reliability needs without any low-availability resources for all areas in the absence of clear RA counting rules that encourage such procurement is questionable. In addition, as a practical matter, “ineffective” resources are necessary to meet the Local area requirements in some areas.

SCE does not expressly define “effectiveness,” but generally suggests that “effectiveness” is a resource’s ability to address various local reliability issues identified in the

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<sup>109</sup> PG&E’s proposal dated March 4, 2019, at 10-11.

<sup>110</sup> *Id.* at 9

CAISO’s annual Local Capacity Technical Study. It is neither possible nor necessary to predetermine resource effectiveness factors for crediting LSE-provided local capacity resource. As CAISO has indicated, given that the effectiveness factors are defined with respect to specific contingencies and may depend on what other resources are procured, it is not obvious how a CPE under the full approach could determine which resources are optimally “effective” relative to all the constraints that must be enforced in its procurement.

**B. The Proposed RA-CPE Framework Would Not Result in Stranded Local RA Capacity**

PG&E asserts that the RA-CPE construct proposed in the Settlement Agreement could create stranded local RA capacity and/or result in double-procurement of System RA capacity.<sup>111</sup> PG&E posits, for example, that if an LSE were long on local capacity and had a sufficient mixture of local and system capacity to meet its share of the Collective System RA Requirements, the Settlement Agreement would limit the LSE from showing surplus Local RA to meet incremental system RA requirements, which would cause the LSE to need to self-procure additional system RA capacity or else depend on the RA-CPE to procure the additional system RA capacity on its behalf.<sup>112</sup>

The Settlement Agreements allows an LSE to do exactly what PG&E suggests should be allowed. While the proposed RA-CPE construct includes constraints on how much an LSE may show to the RA-CPE, an LSE is nevertheless able to show its excess Local RA capacity as System RA capacity in order to meet its share of the collective System RA requirements: recognizing that resource NQCs vary monthly and that LSEs may have self-procured additional RA capacity to serve its customers, the Settlement Agreement allows LSEs to use surplus Local

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<sup>111</sup> PG&E Comments at 12-13.

<sup>112</sup> See PG&E Comments at 13, Table 1.

capacity to meet their share of the additional System and Flexible collective RA requirements.<sup>113</sup> However, this utilization of excess of Local RA capacity may limit the RA-CPE from procuring sufficient Local RA capacity to meet Local reliability needs. In such an instance, the RA-CPE would not procure additional System RA, and there would therefore be no additional System RA costs to allocate.

The showing constraints set within the Settlement Agreement were crafted based on numerous hours of careful deliberations and multiple scenario analyses. One of the core principles of the Settlement Agreement is that procurement cost allocation must follow cost causation. The Settling Parties were concerned that in the absence of a showing constraint, an LSE would be incentivized to procure beyond its share of the Collective RA Requirement and show the surplus Local RA capacity to ensure that it would receive a payment for its excess Local RA procurement. Essentially, the LSE would be able to “put” its excess procurement to the CPE. The showing constraint incentivizes LSEs to bilaterally transact so that their shown RA generally matches their needs for all three products while providing multiple vehicles for selling any capacity in excess of need.

In summary, the Settling Parties believe the Settlement Agreement has struck the balance needed to prevent unintentional withholding and leaning among LSEs.

**C. The CAISO’s RA Enhancement Initiative is Not an Impediment to Adoption of the Proposed RA-CPE Framework**

Both TURN and SCE comment that the Settlement Agreement creates a disincentive for LSEs to “show” excess RA and that this runs counter to the CAISO’s RA Enhancements initiative.<sup>114</sup> As a threshold matter, the Settling Parties note that the full procurement model does

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<sup>113</sup> Joint Motion, Appendix A, § V.D.4. at 7.

<sup>114</sup> TURN Comments at 3; SCE Comments at 26-27.

not allow any LSE to “show” capacity to the CPE and neither the full nor hybrid models contemplate procurement of capacity beyond the reliability needs. In addition, the CAISO acknowledges that it may need to modify its RA Enhancements proposal in response to the Settlement Agreement, noting “CAISO would need to open a formal stakeholder process to fully consider the necessary changes.”<sup>115</sup> Thus, CAISO appears to be willing to undertake CAISO Tariff changes in order to implement the proposed RA-CPE framework.

**VII. SCE’S PROPOSED “MODIFICATIONS” ARE ANTITHETICAL TO THE SETTLEMENT AGREEMENT AND SHOULD BE REJECTED IN THEIR ENTIRETY**

SCE offers the Commission several “ideas” for potential modifications to the RA-CPE framework proposed in the Settlement Agreement. These modifications, while not yielding a fully-developed proposal, would result in a Residual procurement model proposal that departs significantly from what has been proposed by the Settling Parties. SCE’s proposed modifications, which in any event are largely unworkable, should therefore be rejected.

First, SCE appears to advocate in favor of “a residual model in which there is no upfront requirement or valuation of any potential requirements.”<sup>116</sup> This suggestion is clearly at odds with the concern expressed elsewhere in SCE’s comments regarding shifting of the obligation to ensure grid reliability to the CPE. The complete elimination of upfront requirements would result in a lack of transparency – it would make it difficult for LSEs to evaluate the procurement activities of the CPE or to raise concerns regarding over-procurement of Local RA capacity.

Second, SCE proposes to impose a three-year forward procurement requirement with a 100 percent Local RA requirement for all three years.<sup>117</sup> SCE reasons that raising the Year 3

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<sup>115</sup> CAISO Comments at 3.

<sup>116</sup> SCE Comments at 36.

<sup>117</sup> *Id.*

Local RA target percentage to 100 percent will eliminate the need for the CPE to track cost causation.

Table 1 below compares the Local RA Requirement Target Percentages proposed under each construct:<sup>118</sup>

**Table 1**

<b>Local RA Requirements Target Percentage</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
Current Multi-Year Framework	100%	100%	50%
Settlement Agreement	100%	100%	75%
SCE’s Modified Proposal	100%	100%	100%

Under SCE’s proposal, the CPE would allow LSEs to show their three years of forward capacity in order to determine the residual amount of Local capacity that the CPE must procure. However, SCE’s proposal would freeze the three-year forward requirement and would not account for load forecasting changes associated with a multi-year procurement construct. SCE explains that “[w]ith a 100% requirement three-years forward, there is no need to allow incremental procurement in future periods and no need to implement complex methods to determine what was bought for which LSE at which point in time.”<sup>119</sup> This proposal could actually threaten reliability, however, if forecasted load increased for years 2 and 3 compared to when originally forecasted and neither LSEs nor the CPE are allowed to procure incremental capacity. SCE also ignores the negative impact such requirements would have on potential development of new resources through LSE procurement of locally-preferred resources.<sup>120</sup>

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<sup>118</sup> It is unclear how SCE intends to apply these target percentages when there would be no upfront requirements in the first place.

<sup>119</sup> SCE Comments at 36

<sup>120</sup> The Settlement Agreement, in contrast, leaves “room” for new, locally-preferred and self-procured resources to come online in Year 3.

SCE previously noted that “it could prove costly to procure 100% of forecast local area requirements five years forward if unpredicted changes in consumption or changes to the transmission grid obviated the original need in subsequent years. This issue can be addressed by ‘layering in’ procurement annually, such that 100% procurement does not occur sooner than two years forward, to mitigate the risk of such occurrence.”<sup>121</sup> SCE does not address in its current proposal the rationale supporting its change in position. SCE’s proposed modifications would provide little benefit, serving merely to lock in local RA resources for three years forward based on a snapshot of load at a single point in time. LSEs would procure only for the future “Year 3” as time rolls forward since the resources for the rolling Years 1 and 2 are always procured and committed.

Finally, SCE proposes various rules to administer cost allocation and ensure that the LSE and generators have “sufficient credit and collateral to ensure that if the LSE finds itself over-hedged, it does not simply remove the resource from its subsequent RA showing with no obligation on the generator to still perform.”<sup>122</sup> The ability to remove a resource from future RA showings would appear to contradict SCE’s proposal for the supplier to submit “three-year forward supply plan for the RA resource.”<sup>123</sup> Assuming SCE’s proposal provides the ability for LSEs and suppliers to submit new RA and supply plans for the subsequent three years, then the question that must be considered is why the LSE must be required to continue to show the resource if it is excess to its requirement or if the LSE no longer has a procurement obligation. Continuing to show the resource would serve no obvious purpose beyond allowing other LSEs to benefit from that LSE’s surplus.

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<sup>121</sup> SCE Track 2 Testimony, July 10, 2018, p 12, Lines 18-22.

<sup>122</sup> SCE Comments at 38.

<sup>123</sup> *Id.* at 37.

The Settling Parties contemplated many related issues during the settlement discussions that resulted in the constraints laid out in the Settlement Agreement. The Settlement Agreement allows an LSE to bilaterally transact shown RA capacity with another LSE if load decreases,<sup>124</sup> or to offer the previously shown RA to the RA-CPE. Under SCE’s proposal, the second option is removed entirely, and LSEs would have limited ability to optimize their portfolios or to minimize any potential financial penalties from the CAISO for being an RA resource.<sup>125</sup>

SCE further proposes that the CPE collect costs directly from customers in the event of an LSE’s default and have “the IOUs serve as the CPE for their individual TAC areas with costs allocated to all load within the TAC.”<sup>126</sup> SCE’s proposal to designate the IOU to serve as the central buyer in its TAC is outside the scope of the issues addressed in the Settlement Agreement. Thus, SCE’s proposal is inapposite and should not be considered by the Commission in connection with approval of the Settlement Agreement.

#### **VIII. THE SETTLEMENT AGREEMENT’S USE OF THE “SOFT OFFER CAP” IS REASONABLE**

A few parties have criticized the Settlement Agreement’s incorporation of the “Soft Offer Cap” for backstop procurement under the CAISO’s Capacity Procurement Mechanism (“CPM”) or its successor. As explained below, those criticisms are misplaced or misapprehend the Soft Offer Cap’s intended function under the proposed RA-CPE framework. Before the Settling Parties address those criticisms, however, it is important to understand the purpose of the CPM and the function of the Soft Offer Cap in the CAISO context.

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<sup>124</sup> SCE did “object to LSEs trading among themselves to change their hedged position provided the resource is still shown for RA.” SCE Comments at 36.

<sup>125</sup> CAISO currently assesses financial penalties to RA resources based on the resource’s availability under the RA Availability Incentive Mechanism (“RAAIM”).

<sup>126</sup> SCE Comments at 39.

As some parties have pointed out, potential changes to the CPM are currently being examined in the CAISO's CPM Soft Offer Cap stakeholder process. In its most recent CPM Soft Offer Cap straw proposal, the CAISO explained the purpose of the CPM as follows:

Resources procured as resource adequacy capacity are required to be available to the ISO to meet the load-serving and reliability needs of the grid. Occasionally, there are resources that want to retire but cannot as they are essential to maintaining grid reliability. When this happens, the ISO can use its reliability must-run (RMR) authority to retain these essential reliability resources and defer their retirement until new resources are built or transmission is enhanced. There are also situations when resources or capacity procured [by LSEs] through the resource adequacy program are not sufficient to meet the load-serving and reliability needs of the grid. If this happens and if additional capacity is not procured [by LSEs] to cure the deficiency, the ISO relies on its CPM authority to procure the needed capacity to meet the needs of the grid.<sup>127</sup>

The CAISO also provided a concise description of the CPM's operation:

The CAISO attempts to first use bids from the competitive solicitation process from non-resource adequacy capacity when making CPM designations. Resource owners have the opportunity to bid capacity, for total or partial output from a specific resource, into this process. This process is not mandatory, and non-resource adequacy capacity is under no obligation to bid into the competitive solicitation process. However, if a bid for capacity is accepted and awarded a CPM designation, the resource is obliged to accept the CPM award and the associated obligations. These obligations include a must offer obligation and making the awarded capacity subject to the ISO's Resource Adequacy Availability Incentive Mechanism (RAAIM) tool, which provides financial incentives for resources to meet their resource adequacy obligations.<sup>128</sup>

The CAISO then explained the function of the CPM Soft Offer Cap as follows:

Market power mitigation for the competitive solicitation process is provided through a soft offer cap. The soft offer cap is a proxy for the system marginal capacity cost and serves as a "safe harbor" capacity value that owners are allowed bid up to, and receive that value if designated for

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<sup>127</sup> CAISO, *Capacity Procurement Mechanism Soft Offer Cap Straw Proposal*, Jul. 24, 2019 ("CPM Soft Offer Cap Straw Proposal"), at 5. A copy of the CPM Soft Offer Cap Straw Proposal is posted on the CAISO's website at <http://www.aiso.com/Documents/StrawProposal-CapacityProcurementMechanismSoftOfferCap.pdf>.

<sup>128</sup> *CPM Soft Offer Cap Straw Proposal* at 5-6.

a CPM award. [Footnote: Resources are able to bid above the soft offer cap, but these costs need to be verified by the ISO, prior to awarding a CPM designation.] The resource owner does not have to justify any bid at or below the soft offer cap to receive that payment for a CPM designation. Currently, the soft offer cap is set at \$75.67/kW-year, or \$6.31/kW-month.<sup>129</sup>

The Settlement Agreement contains two substantive provisions that reference the CPM Soft Offer Cap.<sup>130</sup> The Soft Offer Cap's intended function under those provisions is twofold. First, it acts as a price "cap" on the bids the RA-CPE will accept, on a least-cost basis, until the residual RA requirements for each month of the applicable delivery period have been met. This will mitigate the need for CAISO backstop procurement by: (1) ensuring that the RA-CPE will procure, on a least-cost basis, those RA resources that are needed to meet the residual RA requirements but were not picked up by LSEs through their bilateral contracting; (2) ensuring the RA-CPE will not simply defer to the CAISO the procurement of needed resources that are priced at or near the Soft Offer Cap; and (3) eliminating the incentive for suppliers to withhold capacity from the RA market in the hope of their resources being procured at a higher price through the CPM process.

Under the Settlement Agreement, the Soft Offer Cap also acts as a "trigger" for both (a) the requirement that a supplier provide an explanation for why a higher price is reasonable and (b) the requirement that the RA-CPE perform a reasonableness analysis that takes into consideration Commission-approved procurement criteria and the information provided by the supplier.<sup>131</sup> These requirements will ensure that the RA-CPE will only procure resources at

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<sup>129</sup> *CPM Soft Offer Cap Straw Proposal* at 6.

<sup>130</sup> Joint Motion, Appendix A, §§ III.B and III.C.6. at 3-4.

<sup>131</sup> *Id.*, § III.C.6. at 4.

prices above the Soft Offer Cap when, on both a practical level and a policy basis, it is reasonable to do so.

The Department of Market Monitoring (“DMM”) expresses two concerns that are specific to Settlement Agreement’s use of the CPM Soft Offer Cap.<sup>132</sup> First, DMM observes that “the CPM Soft Offer Cap is only one element of the CAISO’s backstop procurement authority, which includes a combination of various CPM and [RMR] tariff provisions,” and notes potential changes to these backstop procurement mechanisms are currently under consideration.<sup>133</sup> DMM’s concern here appears to be that Soft Offer Cap that “could be replaced with an entirely different CPM compensation method designed to mitigate potential market power due to the lack of competitiveness in the CAISO’s capacity procurement process.”<sup>134</sup> DMM also expresses concern that “the current Soft Offer Cap may be based on an estimate of the going forward fixed costs of resources in the California market that is several fold greater than actual going forward fixed costs of most resources.”

DMM’s objection to the Settlement’s use of the CPM Soft Offer Cap seems to be that the RA-CPE may end up paying more for certain RA-CPE resources (i.e., prices up to the *current* Soft Offer Cap) than the CAISO would pay for the same resources under a revised (and presumed lower) Soft Offer Cap or some other “CPM compensation method.” However, the Settlement Agreement expressly contemplates the possibility that the CPM Soft Offer Cap will be revised. It does so by defining “Soft Offer Cap” as the CPM “offer cap” that is specified in the CAISO Tariff.<sup>135</sup> The Soft Offer Cap under the Settlement Agreement will therefore be the

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<sup>132</sup> DMM has a third concern that it relates to the Settlement’s use of the Soft Offer Cap but is more accurately related to the Settlement Agreement’s provision limiting the RA-CPE’s procurement authority to RA products only.

<sup>133</sup> DMM Comments at 1.

<sup>134</sup> DMM Comments at 1-2.

<sup>135</sup> Joint Motion, Appendix A, § I.J. at 2.

same as the CPM Soft Offer Cap specified in the CAISO Tariff, whatever it may be. The Settlement also contemplates the possibility that the CPM will be replaced with some other mechanism, in which case the Soft Offer Cap under the Settlement Agreement will change to whatever the “offer cap” may be under the CPM successor mechanism. If the existing CPM compensation method (*i.e.*, the awarding of bids up to the “offer cap” with the opportunity for sellers to justify higher prices) changes, then parties can petition the Commission to modify the RA-CPE solicitation protocols accordingly.

A different criticism of the Settlement Agreement’s use of the Soft Offer Cap is that it could serve to prevent new, potentially higher priced resources (e.g., energy storage) from competing in the RA-CPE’s solicitations.<sup>136</sup> However, the Settlement Agreement expressly provides that the RA-CPE’s solicitations will be open to both existing and new resources.<sup>137</sup> The Settlement Agreement also provides that the RA-CPE’s procurement decisions will take into account the effectiveness of resources in meeting state energy policy objectives.<sup>138</sup> In addition, the Settlement Agreement expressly allows the RA-CPE to accept bids at prices above the Soft Offer Cap where the higher prices are properly justified and procurement of the resource in question is consistent with Commission-approved selection criteria.<sup>139</sup> While the Settling Parties have not attempted to dictate what those criteria might be, we fully expect that the criteria will include a resource’s contribution toward meeting the state’s clean energy goals. In light of these provisions, the Settling Parties respectfully submit that concerns about the ability of new resources—whose costs may exceed the CPM Soft-Offer Cap—to compete in the RA-CPE’s solicitations are misplaced.

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<sup>136</sup> Vistra Comments at 2; CESA Comments at 4;

<sup>137</sup> Joint Motion, Appendix A, § III.C.1. at 3.

<sup>138</sup> *Id.*, § III.C.2.c. at 3.

<sup>139</sup> *Id.*, § III.B. at 3.

In contrast to other proposals on the record, the Settlement Agreement provides an actual price cap and transparency whereas other proposals do not. The Energy Division’s multi-year proposal defers this decision to the judgement of the CPE “to decide when it would be better for the resource to be procured through the annual backstop mechanisms...” and requires an independent evaluation to report on market power. PG&E’s full procurement proposal would also defer the procurement decision to the CPE while raising any market power concerns to the CPUC in a filing to select between two portfolios the CPE suggests for procurement. SCE’s hybrid procurement proposal also would allow the CPE to procure without a price cap and defer the judgement of market power to the Commission by reasoning “the central buyer is not obligated to procure if the Commission believes the proposed procurement is not reasonable...” In all of these cases, either the CPE will have the option to make a subjective judgement call, which would lead to non-transparent selection process, or the CPE would defer to the Commission through a procedural filing, which may prolong the procurement process and delay contract execution. In contrast, the Settlement Agreement provides a clear and transparent constraint on RA-CPE procurement that effectively addresses market power concerns.

**IX. THE SETTLEMENT AGREEMENT, CONTRARY TO SCE’S CLAIM, MITIGATES COMPLEXITIES INHERENT IN A MULTI-YEAR CENTRAL PROCUREMENT MECHANISM**

SCE contends that “the Settlement Agreement’s proposed residual model introduces a significant amount of complexity because of the difficulty in addressing cost allocation related to load migration under a residual model.”<sup>140</sup> SCE’s Hybrid proposal is simple, i.e., allocate all CPE costs to all load on a load share basis. It achieves this simplicity, however, by imposing additional complexity on LSE bilateral procurement. For example, under the SCE approach, an

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<sup>140</sup> SCE Comments at 24.

LSE must make complicated tradeoffs about whether to retain capacity or sell it to the CPE and how to hedge its system and flexible RA positions in light of the uncertainty about what capacity it might lose by selling to the CPE and what system and flexible attributes it might be allocated by the CPE. In both the full and hybrid procurement models, these “complexities” are not clearly identified but are still part of the cost allocation process.

In addition, SCE’s concerns about the complexity of CPE cost allocation under the Settlement Proposal are misplaced; the fear that “the complexity can quickly grow to a point where it may not be controllable or sustainable”<sup>141</sup> is simply not supported by the facts. To the contrary, the specificity presented in the Settlement Agreement proposal provides clarity by addressing the complexity inherent in a multi-year RA framework, and proposing detailed and workable mechanisms. Rather than rejecting the Settlement Agreement, the Commission should focus on ensuring smooth implementation of the Settlement Agreement through constructive refinements of the proposed framework in an open forum.

**A. The Settlement Agreement Mitigates the Complexity of New Entry and Load Migration Inherent in a Residual Model**

SCE exaggerates the complexity of the Settlement Agreement with vague scenarios that the Settlement Agreement addresses:

Additional complexity arises when more complicated scenarios are involved, such as how the model would accommodate the entry of a new LSE when existing LSEs and the CPE have already procured sufficient local capacity to meet a specific local (or sub) area requirement. Although the proposal has some mechanisms to encourage the sale from LSEs that lose load such that load gaining LSEs can meet their own needs, it is not clear how this mechanism can be administered while ensuring that central procurement costs are not inappropriately shifted among LSEs.<sup>142</sup>

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<sup>141</sup> SCE Comments at 25.

<sup>142</sup> SCE Comments at 24.

SCE's contention fails to demonstrate flaws in the proposal in three ways. First, SCE alludes to but does not describe multiple "more complicated scenarios" (except for one, addressed below). Second, it invokes the "cost shift" label without explaining whose costs are shifting to whom or how. Third, SCE observes that the Settlement Agreement has mechanisms that allow for resource trading to address load migration, but alleges it fails to explore these mechanisms and demonstrate how they might lead to cost shifting.

The Settlement Agreement uses three primary tools to address load migration and new entry (the sole "complicated" scenario raised by SCE). First, the Settlement Agreement leaves a percentage margin for future procurement for Year 3 for Local RA Requirements and, for Years 2 and 3 for System and Flexible RA Requirements as well; this leaves flexibility for LSEs to make adjustments for migrating load.<sup>143</sup> The Settlement Agreement also allows LSEs to bilaterally transact their shown RA capacity,<sup>144</sup> thereby enabling an LSE that is losing load to sell its Shown RA capacity to a new entrant that may be receiving the migrating load. The Settlement Agreement also allows LSEs that lose load to reduce their showing or sell their now "excess" RA to the RA-CPE.<sup>145</sup> All of these options allow and incentivize LSEs to optimize their portfolios to reduce any excess capacity just as any LSE would do today.

**B. Load Forecast Error is Inherent in the Multi-Year Construct that Any Framework Must Identify and Resolve**

In its recitations of purported complexities, SCE also points to cost allocation in the case of load forecast error. SCE states:

It also appears that even if an LSE procures an exact amount based on its actual load, it may be allocated a share of the CPE procurement cost (likely due to load

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<sup>143</sup> Joint Motion, Appendix A, § III.B. at 3.

<sup>144</sup> Joint Motion, Appendix A, § V.D. at 6.

<sup>145</sup> *Id.*

forecast error), which adds to the complexity regarding whether this cost allocation is appropriate compared to an alternative allocation mechanism.<sup>146</sup>

Load forecasts change annually based on a variety of factors that the California Energy Commission takes into consideration when it establishes the forecast. The Settlement Agreement specifically addresses load forecast error when load declines year over year and the RA-CPE has procured additional capacity than would now be needed to meet the Residual RA Requirement. This forecast error would occur in both the full and hybrid models and the costs of the over procurement would also be allocated to all impacted LSEs per the respective cost allocation mechanisms. In effect, the cost allocation due to forecast error is the same between the full, hybrid and residual procurement models with the exception that the residual model clearly distinguishes over-procurement due to load forecast error.

**C. The Complexity Arising from *Ex Ante* Actions and *Ex Post* Cost Allocation Will Be Present in Any Multi-Year Program**

SCE claims that the Settlement Agreement is flawed due to “a combination of actions taken based upon ex ante determinations (*e.g.*, load forecasts for the entire local area and that of individual LSEs) and ex post determinations (*e.g.*, actual load served and actual procurement of local resources) in order to arrive at a cost allocation.”<sup>147</sup> SCE contends that “this introduces additional complexity not presently in the RA structure and should be avoided.” This statement is inaccurate. The current CAM process, one recommended by both PG&E and SCE, allocates capacity to LSEs based on LSEs’ ex ante forecasts while costs are allocated to the LSEs on an ex post basis. The Settlement Agreement would not create or impose any additional complexity beyond that which exists today.

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<sup>146</sup> SCE Comments at 24.

<sup>147</sup> SCE Comments at 24.

SCE suggests that its preferred approach will avoid any of these concerns. It claims:

[A] full front-stop procurement model can be much more direct and efficient in addressing the underlying cost allocation issues related to load migration. A full procurement model will provide certainty in how the central procurement cost is allocated without the complexity otherwise seen from the proposed residual model.<sup>148</sup>

SCE attempts to claim that its approach is superior only because its ability to accurately reflect cost causation and seamlessly address load migration *has not been vetted*. Providing “certainty” in the method of cost allocation is not necessarily an improvement on the Settlement Agreement, which allocates costs on cost causation principles. SCE also ignores the fact that while the cost allocation of its central procurement approach might be simple, it significantly complicates bilateral procurement.

## **X. OTHER ISSUES**

### **A. The Settlement Agreement’s Proposed Three-Year Limit on Contract Terms for RA-CPE Procurement Represents a Reasonable Compromise of Interests**

The Settlement Agreement enables the RA-CPE to procure RA products for a term of up to three years.<sup>149</sup> CAC challenges this value as being “adequate for merchant gas-fired generation facilities....[but] the profile is inapplicable to CHP operations.”<sup>150</sup> CAC states that for “CHP and UPG operations, major maintenance overhauls occur in 5-year cycles.”<sup>151</sup> CAC continues:

Truncating the RA contract term sends a counterintuitive message to the operator to defer or avoid maintenance that cannot be financially covered under the term of the PPA. This means the generating facility is not as reliable as it would be with a fully-funded maintenance schedule.<sup>152</sup>

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<sup>148</sup> SCE Comments at 24.

<sup>149</sup> Joint Motion, Appendix A, Section III.C.5.

<sup>150</sup> CAC comments at 9.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

In making this argument, CAC erroneously equates the term of agreement with the length of maintenance cycles. However, it is not apparent, as CAC suggests, that a generating resource would enter into a contract that does not cover its maintenance costs and, as a result, operate less reliably. Moreover, nothing in the Settlement Agreement precludes a generator from recovering the costs of its five-year major maintenance cycle through a three-year contract, through multiple three-year forward procurement cycles, or through contracting for longer terms bilaterally. Finally, the Settlement Agreement's creation of a three-year system RA requirement adds more security than a system CHP resource has today under the year-to-year RA compliance cycles.

As with many aspects of the Settlement Agreement, the three-year contract term limitation represents a compromise among parties who may have preferred a shorter or longer term of RA-CPE commitment.

**B. The Settlement Agreement Maintains the Status Quo for Allocation and Use of MIC Rights**

Powerex proposes modifications to the Settlement Agreement's provisions regarding the availability and allocation of Maximum Import Capability ("MIC") rights.<sup>153</sup> In doing so, Powerex goes beyond the scope of the Settling Parties' intended treatment of MIC rights, which focused solely on the purchase or sale of such rights by the RA-CPE. Indeed, Powerex proposal arguably steps into the CAISO's domain. The Settling Parties did not intend, nor is this the proper forum to address, the CAISO's rules governing the allocation and use of MIC rights.

Instead, the Settlement Agreement addresses MIC rights very narrowly. It provides that the "RA-CPE may procure any maximum import capability (MIC) rights needed to facilitate the

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<sup>153</sup> Powerex Comments at 6-7.

procurement of import RA Capacity.”<sup>154</sup> It further provides that LSEs may offer unused MIC rights to the RA-CPE in its annual RFO process.<sup>155</sup> The Settlement Agreement thus foundationally assumes that the availability and allocation of MIC rights will remain a subject that is addressed by the CAISO and subject to FERC jurisdiction.

## **XI. CONCLUSION**

For all the foregoing reasons, the Settling Parties submit that the Settlement Agreement demonstrably addresses the Commission’s requests and the known challenges to the current RA program and represents a significant step toward improving the existing RA framework. The Settling Parties therefore respectfully request that the Commission adopt the Settlement Agreement in its entirety and without modification.

Respectfully submitted,



EVELYN KAHL  
Counsel to the California Community Choice  
Association

October 15, 2019

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<sup>154</sup> Joint Motion, Appendix A, Section III.C.4.

<sup>155</sup> *Id.*, Section V.C.