FILED
04/06/20
04:59 PM

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 (Filed September 28, 2017)

CALIFORNIA COMMUNITY CHOICE ASSOCIATION COMMENTS ON LIMITED REHEARING OF DECISION 19-10-021

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April 6, 2020

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The California Community Choice Association ("CalCCA")[1] submits these comments on the limited rehearing of Decision ("D.") 19-10-021 pursuant to the March 20, 2020, ruling of Administrative Law Judge Chiv ("ALJ Ruling").

I. INTRODUCTION

Decision 19-10-021 purported to affirm existing compliance requirements for import resource adequacy ("RA") contracts,[2] a conclusion that drew opposition and applications for rehearing from CalCCA, the California Independent System Operator ("CAISO") and Powerex Corp. ("Powerex").[3] The Commission appropriately responded to these applications by granting limited rehearing, recognizing that the decision goes beyond simply affirming existing requirements,[4] lacks an adequate evidentiary record to support the decision's conclusions,[5] and

[1] California Community Choice Association represents the interests of 20 community choice electricity providers in California: Apple Valley Choice Energy, CleanPowerSF, Clean Power Alliance, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Monterey Bay Community Power, Peninsula Clean Energy, Pioneer Community Energy, Pico Rivera Innovative Municipal Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Jacinto Power, San Jose Clean Energy, Silicon Valley Clean Energy, Solana Energy Alliance, Sonoma Clean Power, Valley Clean Energy, and Western Community Energy.

[2] D.19-10-021, Ordering Paragraph 1, at 21.

[3] *See* D.20-03-016 at 1.

[4] *See* D.20-03-016 at 5-6.

[5] *Id.* at 7-8.

leaves ambiguity in its wake.[6] Decision 20-03-016 thus grants limited rehearing on three grounds:

- "[T]o allow party comments as to the self-scheduling requirement, and as to the distinction between resource-specific and resource-non-specific RA import contracts."
- "[T]o augment the existing evidentiary record regarding the distinction between resource-specific and resource-non-specific RA import contracts, and to provide a sufficient evidentiary basis for this distinction."
- "[T]o clarify certain specific terms used in D.19-10-021, including "resource-specific" and "resource-non-specific," as well as to clarify the timeframe within which RA importers are required to self-schedule in the CAISO market."

The ALJ Ruling seeks comments on these issues, observing that these issues are also under consideration in Rulemaking ("R.")19-11-009.[7]

Recognizing the overlap between the two RA rulemakings, the ALJ Ruling incorporates the record on import RA from R.19-11-009 Track 1 into the R.17-09-020 record for purposes of rehearing.[8] The ALJ Ruling also allows additional comments on rehearing issues, admonishing parties no to "repeat comments that were previously submitted in Track 1 of R.19-11-009."[9]

CalCCA has proposed in Track 1 a "blended proposal" drawing elements from proposals by the CAISO and Morgan Stanley Capital Group.[10] Without repeating its full proposals, CalCCA summarizes its positions on the two issues presented for limited rehearing.

- CalCCA's definition of eligible specific source includes a single specified source, including a pseudo-tied or dynamically scheduled resource, or a group of specific sources with supply surplus to the host balancing authority area ("BAA") needs.

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6 *Id.* at 8-9.
7 ALJ Ruling at 3 (*quoting* D.20-03-016 at 8).
8 *Id.* at 4.
9 *Id.* at 5.
10 R.19-11-009, *Opening Comments of the California Community Choice Association on Track 1 Proposals,* Mar. 6, 2020; *Reply Comments of the California Community Choice Association on Track 1 Proposals,* Mar. 11, 2020

- CalCCA does not propose to impose a self-scheduling or must-flow requirement on any import RA resource.

CalCCA agrees with the Commission and ALJ that the record in R.19-11-009, which includes CalCCA proposals, will be sufficient to inform a *de novo* decision on import RA requirements.

One critical issue arising from the limited rehearing, however, will not be resolved in R.19-11-009 and merits consideration in these comments: treatment of compliance filings made by load-serving entities ("LSE") in 2019 and 2020 (*e.g.* the 2020 Year-Ahead and 2020 Month-Ahead submissions). The Commission should make clear that the import RA compliance rules in place prior to the issuance of D.19-10-021, including the interpretation of those rules applied by Energy Division Staff in prior years, will be applied in assessing all import RA contracts shown for the 2019 and 2020 compliance years.

The Commission should also consider the impacts of its decision in R.19-11-009 in the context of LSEs' procurement cycle to avoid repeating the disruption created in 2019. CalCCA urges the Commission to issue a final decision by its June 15, 2020, meeting. If it is unable to meet this target, the Commission should defer implementation to the 2022 compliance year.

II. 2019 AND 2020 RA COMPLIANCE SHOULD BE DETERMINED USING THE IMPORT RA RULES IN PLACE PRIOR TO ISSUING D.19-10-021 AND THE ENERGY DIVISION'S LONG-STANDING INTERPRETATION OF THOSE RULES

A. The Commission's Import RA Inquiry Has Created Considerable Uncertainty and Unreasonably Disrupted LSEs' RA Compliance Efforts

The highly abbreviated process, timing, and outcome of the Commission's import RA inquiry have left considerable uncertainty in the RA market and undermined LSEs' RA procurement efforts. The Commission first raised questions regarding compliance requirements for import RA in a July 3, 2019, Assigned Commissioner's Ruling ("ACR"). The ACR sought responses from parties on "the use of energy imported into California to meet resource adequacy

RA requirements.[11] It contemplated that parties responses would determine whether "the rules should be changed to deter speculative contracts, as well as to ensure the integrity of the RA program."[12] The ACR did not state an intent to adopt rule changes for the 2020 compliance year, for which procurement was already underway.

The process moved at lightning speed. Parties were permitted to file comments in response to the ACR on July 19 and reply comments on July 26. The whole exercise – from introducing the idea to final comments – took place in 23 days. The ALJ issued a proposed decision on September 6. The Commission voted out a final decision on October 10, the earliest available voting meeting. Importantly, the proposed decision was moved to the consent agenda, which precluded any discussion among the Commissioners about the controversial and complex issues raised in comments or acknowledgment of the material changes to the proposed decision made 24 hours before adoption of D.19-10-021.

The Assigned Commissioner's inquiry created a high level of uncertainty at a critical time in LSEs' procurement processes. In an effort to diligently and responsibly procure towards their RA requirements, LSEs began RA procurement for the upcoming compliance year by or before the Spring of the current year; it would have been imprudent to defer their efforts procurement until the Commission issued their final RA requirements in September. The CAISO typically makes Maximum Import Capability ("MIC") allocations early in the summer enabling parties to lock down import RA resources. 2020 MIC allocations were released in the first week of July 2019.[13] Consequently, by the time D.19-10-021 was issued – only three weeks

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[11] *Assigned Commissioner's Ruling Seeking Comment on Clarification to Resource Adequacy Import Rules*, Jul. 3, 2019, at 1.

[12] *Id.*

[13] http://www.caiso.com/Pages/documentsbygroup.aspx?GroupID=48F5826A-937B-482B-A936-D970C05BBFAF

prior to the 2020 year-ahead showing[14] -- many (if not all) LSEs had already engaged in negotiations and in some cases finalized contracting for RA resources for the upcoming compliance year. Making matters worse, the decision was issued only a week prior to the month-ahead showing for December 2019 requirements.

The immediate implementation of D.19-10-021 upended contracts that had been executed in good faith compliance with the pre-existing rules. Importantly, this forced LSEs to engage in emergency contract renegotiations and contract amendments to make additional good faith efforts to understand and comply with changes adopted in the Commission's RA Decision (a decision now acknowledged to contain legal and factual flaws)[15] Compounding the ongoing ambiguity and confusion, Energy Division began issuing compliance guidance to clarify the requirements of D.19-10-021 in response to LSEs' compliance submissions; a procedurally inappropriate and disruptive means of clarifying legal and policy ambiguities in a Commission decision.

Even had the decision been timely issued, it would have left uncertainty in its wake. CalCCA raised its concerns in its rehearing application[16] and motion for stay,[17] on October 24, 2019. The AFR highlighted errors in D.19-10-021, including language in the decision that was too vague to enable compliance. The Stay Motion highlighted timing problems in the procurement process and the costs to customers of the uncertainty D.19-10-021 created. The

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[14] *2020 Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings*, Oct. 17, 2019.

[15] 2019 RA Compliance Due Dates, https://www.cpuc.ca.gov/General.aspx?id=6311

[16] *Application for Rehearing of Decision 19-10-021 of the California Community Choice Association,* Oct. 24, 2019 ("CalCCA AFR"").

[17] *California Community Choice Association's Motion for Stay of Decision 19-10-021*, Oct. 24, 2019 ("Stay Motion").

month-ahead December 2019 and year-ahead 2020 compliance deadlines passed, however, with no clarification Commission.

Two months later, the Commission addressed the Stay Motion. Decision 19-12-064 granted the stay, acknowledging "potential for harm to the parties in the event that the requirements of D.19-10-021 are modified in response to [CalCCA's] application for rehearing….".[18] The Commission stayed the decision until the disposition of the applications for rehearing. Leaving further uncertainty, the decision did not clarify how compliance for December 2019 or the annual 2020 compliance showings would be assessed in light of the shifting rules, leaving LSEs in an compliance limbo that continues to this day. In fact, Energy Division's "approval" of any compliance filing has come with qualifications:

> In response to an April 3, 2019 e-mail from Energy Division, Load Serving Entities (LSE) have provided either contract language or attestations from import providers to demonstrate that any unspecified import resources in RA filings comply with the guidelines established by D.04-10-035 and D.05-10-042. This practice should continue during the stay of D.19-10-021. Energy Division is continuing to collect the relevant documentation needed from LSEs to inform the Commission's deliberations on D.19-10-021 and other existing legal requirements. This information will aid the Commission's efforts to formally clarify the applicable rules and guidelines for unspecified RA imports.[19]

LSEs are left in the position of not knowing whether their December 2019 or annual 2020 showings will be fully approved by Energy Division Staff. LSEs are further left with uncertainty on how the rules for 2021 will shake out or when these rules might become final, impairing their ability to anticipate or test the market for import RA supply. Furthermore, some suppliers may

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[18] D.19-12-064 at 1.

[19] *See, e.g.,* March 27, 2020 (erroneously dated 2019) letter from Edward F. Randolph, Energy Division Director, to Geof Syphers, Chief Executive Officer of Sonoma Clean Power (approving Sonoma's May 2020 monthly RA compliance filing).

understandably be unwilling to engage in negotiations for import RA at all until there is further clarity on the requirements.

B. The Commission Should Clarify that It Will Assess Import RA Contract Eligibility for 2019 and 2020 Compliance Applying the 2004-2005 Rules as Previously Interpreted and Applied by Energy Division Staff

It would be unlawful to apply the new rules and interpretations adopted by D.19-10-021 to 2019 or 2020 compliance. As CalCCA argued in its AFR and Stay Motion, the timing of the decision, the significance of the changes it adopted, and the vagueness of its requirements would make application of the decision unlawful.[20] Moreover, the Commission itself has acknowledged, after reviewing allegations of error in D.19-10-021, that there is "good cause" to grant rehearing on the grounds raised by CalCCA and others. Finally, the Commission has signaled that its response to the applications to rehearing will be to develop new rules *de novo* in R.19-11-009. Under all of these circumstances, applying these new rules retroactively to 2019 or 2020 compliance would be unlawful. Like statutory changes, Commission rules should be presumed to be prospective, particularly when to apply the rules retroactively would impair an obligation in a contract.

If the Commission cannot apply the rules and interpretations adopted in D.19-10-021 or the rules ultimately adopted in R.19-11-009, it must apply the rules in place at the time the decision was adopted. The Commission should thus make clear that the eligibility of import RA for 2019 and 2020 compliance will be determined applying the rules in place since the Commission issued D.04-10-035 and D.05-10-042. Further, the Commission should clarify that these rules must be applied in the same manner Energy Division Staff applied them in determining RA compliance in prior years.

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[20] *See* CalCCA AFR at 2-3 (summarizing legal grounds for rehearing).

III. THE COMMISSION SHOULD SET AN IMPLEMENTATION TIMELINE FOR ANY NEW IMPORT RA REQUIREMENTS THAT RESPECTS 2021 RA PROCUREMENT TIMELINES

The timing of D.19-10-021 was a key driver of the uncertainty the decision engendered. Uncertainty was created in the middle of LSE's procurement process for 2020 RA compliance. The Commission should not repeat this error.

CalCCA requests that the Commission issue a final decision in R.19-11-009 not later than its June 15, 2020, business meeting. If the Commission is unable to issue a final decision before the CAISO's MIC allocations are made, the Commission should defer implementation of new import RA rules to the 2022 compliance year.

IV. CONCLUSION

For the foregoing reasons, CalCCA supports the Commission's integration of the record from R.19-11-019 into this docket to inform the final resolution of the applications for rehearing. CalCCA further requests clarification that the Commission will assess import RA contract eligibility for 2019 and 2020 compliance applying the 2004-2005 rules as they have previously been applied by Energy Division Staff. Finally, CalCCA requests adoption of an implementation timeline for any new requirements that respects 2021 RA procurement timelines.

Respectfully submitted,

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April 6, 2020