



FILED
06/08/20
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

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION
COMMENTS ON THE PROPOSED DECISION ADOPTING
RESOURCE ADEQUACY IMPORT REQUIREMENTS**

Evelyn Kahl
General Counsel
California Community Choice Association
One Concord Center
2300 Clayton Road, Suite 1150
Concord, CA 94520
(415) 254-5454
regulatory@cal-cca.org

June 8, 2020

TABLE OF CONTENTS

I. INTRODUCTION1

II. THE NARROW DEFINITION OF “RESOURCE SPECIFIC” WILL UNNECESSARILY EXCLUDE LEGITIMATE RESOURCE-BACKED IMPORT SUPPLIES TO THE DETRIMENT OF RATEPAYERS2

 A. The PD, in Combination with Other Recent Commission Actions, Will Reduce Available System RA Supply and Create Substantial Net Deficits in Summer Months3

 B. The Definition of “Resource Specific” Should Be Expanded to Include, at a Minimum, Individual or Aggregated Resource Pools That Are Verified as Uncommitted to Another BAA and Committed to the Commission’s RA Program4

III. THE COMMISSION SHOULD CLARIFY THE IMPORT RA RULES THAT WILL APPLY FOR PURPOSES OF 2019 AND 2020 COMPLIANCE.....6

 A. The Rules in Place Before D.19-10-021 Was Issued Should Apply to Determine Eligibility of Import RA Contracts for 2019 and 2020 Compliance6

 B. The Commission Should Clarify the Historical Application of the Import RA Rules in Place Prior to D.19-10-021 to Conform to Underlying Decisions and Past Practices.....9

IV. MULTI-YEAR IMPORT RA CONTRACTS EXECUTED BEFORE D.19-10-021 SHOULD BE GRANDFATHERED TO AVOID STRANDING VALUE AT RATEPAYERS’ COST10

V. THE COMMISSION SHOULD CLARIFY THAT AN LSE MAY SHOW IMPORT RA FOR COMPLIANCE EVEN IF THE LSE IS NOT THE DIRECT IMPORTER.....11

VI. CONCLUSION.....11

TABLE OF AUTHORITIES

CPUC Rules of Practice and Procedure

Rule 14.3 1

CPUC Decisions

D.04-10-035 9

D.05-10-042 6, 8, 10

D.19-06-026 3

D.19-10-021 passim

D.19-12-064 2

D.20-03-016 2

SUMMARY OF RECOMMENDATIONS

1. The narrow definition of “resource specific” import RA will remove reliable, resource-backed supply from the market. The Commission should expand the definition to include individual or aggregated resources that the California Independent System Operator can operationally validate are not encumbered by another balancing area authority and are committed to the California market. Failing to expand the definition will create artificial scarcity in the market and, consequently, unnecessarily increase ratepayer costs.
2. The PD does not specify how the eligibility of import RA contracts for 2019 and 2020 compliance will be determined. The Commission should clarify that eligibility of these contracts will be determined by applying the compliance rules in place prior to the issuance of D.19-10-021 in a manner consistent with then-existing practices. This approach is necessary to ensure that the Commission has given load-serving entities adequate notice of changed eligibility requirements and complied with its own Order Granting Stay. Further, it would be unlawful for the Commission to apply the rules adopted in D.19-10-021 for 2019 and 2020 compliance, which it determined lack evidentiary support.
3. The PD will strand import RA value for contracts executed prior to the issuance of D.19-10-021 that extend beyond 2020 if those contracts do not fully conform to the PD’s new requirements. The Commission should “grandfather” these contracts through their original term recognizing its failure to provide reasonable notice of changed eligibility requirements.
4. The PD requires that a non-resource-specific contract must include “the sale of energy to the LSE” to be eligible for RA compliance. The Commission should clarify that the LSE showing a non-resource-specific contract for compliance is not required to be the direct importer of the supply.

**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

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION
COMMENTS ON THE PROPOSED DECISION ADOPTING
RESOURCE ADEQUACY IMPORT REQUIREMENTS**

The California Community Choice Association (“CalCCA”)¹ submit these comments pursuant to Rule 14.3 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure on the May 22, 2020, proposed *Decision Adopting Resource Adequacy Import Requirements* (“PD”).

I. INTRODUCTION

CalCCA appreciates the PD’s commitment to shoring up the Commission’s resource adequacy (“RA”) program by removing speculative import supplies from the California market. While well-intentioned, however, the PD throws the baby out with the bathwater, foreclosing reliance on legitimate, resource-backed import supplies. Excluding these resources from available RA supply is unnecessary and will, in combination with other recent Commission actions, create a shortfall of system RA in the near term. As a consequence, the PD will increase ratepayer costs, contrary to its express intent to adopt “requirements that reasonably balance reliability and costs to ratepayers.”² CalCCA thus urges the Commission to modify the definition of “resource-specific” to include all imports of specific resources or aggregated

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 PD, Finding of Fact 4 at 50.

resource pools that can be operationally validated as unencumbered by another balancing authority area (“BAA”) and committed to the California market.

In addition, CalCCA seeks clarification of the PD in three respects. First, the PD does not specify how the eligibility of import RA contracts for 2019 and 2020 compliance will be determined. Considering its Orders Granting Stay³ and Limited Rehearing of D.19-10-021,⁴ the Commission should clarify that eligibility of these contracts will be determined by applying the compliance rules in place prior to the issuance of D.19-10-021 in a manner consistent with then-existing practices. This approach is necessary to ensure that the Commission has given load-serving entities (“LSEs”) adequate notice of changed eligibility requirements. Further, it would be unlawful for the Commission to apply any portion of D.19-10-021, which it determined was vague and lacked sufficient evidentiary support, for this purpose.

Second, the PD will strand import RA value for contracts executed prior to the issuance of D.19-10-021 that extend beyond 2020 if those contracts do not fully conform to the PD’s new requirements. The Commission should “grandfather” these contracts through their original term recognizing the critical importance of providing reasonable notice of changed eligibility requirements.

Third, the PD requires that a non-resource-specific contract must include “the sale of energy to the LSE” to be eligible for RA compliance. The Commission should clarify the LSE showing a non-resource-specific contract for compliance is not required to be the direct importer of the supply.

Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs are provided in Appendix A.

II. THE NARROW DEFINITION OF “RESOURCE SPECIFIC” WILL UNNECESSARILY EXCLUDE LEGITIMATE RESOURCE-BACKED IMPORT SUPPLIES TO THE DETRIMENT OF RATEPAYERS

The Rehearing Order granted rehearing of the definition of “resource specific,” finding good cause in CalCCA’s argument that the term was vague and left LSEs “uncertain as to what

³ D.19-12-064, *Order Granting Stay of Decision (D.) 19-10-021*, Dec. 19, 2019 (“Stay Order”).

⁴ D.20-03-016, *Order Granting Limited Rehearing of Decision (D.) 19-10-021*, Mar. 12, 2020 (“Rehearing Order”).

types of contracts are sufficient to meet the requirements of the Decision.”⁵ The PD adopts a specific definition, providing that a resource-specific import contract must meet the following requirements:

- (1) The resource is pseudo-tied or dynamically scheduled into the CAISO day-ahead and real-time markets; and
- (2) The LSE includes a resource-specific resource ID in its filings that is on a matching CAISO supply plan and listed in the Commission’s NQC list.⁶

In defining “resource specific” in this way, the PD eliminates legitimate, resource-backed resources from the RA market without justification. By unnecessarily limiting supply, the PD will undermine reliability, increase RA prices, and thus increase costs to ratepayers. This runs counter to the PD’s stated objective to adopt “requirements that reasonably balance reliability and costs to ratepayers.”⁷ CalCCA proposes a broader definition of resource-specific to include all individual or aggregated resources that the CAISO can validate as unencumbered by another BAA and committed to the California RA market.

A. The PD, in Combination with Other Recent Commission Actions, Will Reduce Available System RA Supply and Create Substantial Net Deficits in Summer Months

Adopting the PD without modification will dramatically tighten the already-constrained system RA supply available to LSEs who must comply with the Commission’s requirements. In D.19-06-026,⁸ the Commission reduced the Effective Load Carrying Capability (“ELCC”) for solar and wind resources. Based on calculations performed by East Bay Community Energy, eliminating eligible system RA supply from 120 MW in December to 3,493 MW in October.⁹ The PD proposes further reductions of qualifying capacity from hydro resources, ranging from

⁵ Rehearing Order at 8-9.

⁶ PD, Ordering Paragraph 1 at 53.

⁷ PD, Finding of Fact 4 at 50.

⁸ D.19-06-026, Ordering Paragraph 19 at 64.

⁹ 2021 Generation Estimate derived from 2020 NQC reports (updated with retirements, resource additions and import volumes). Hydro Losses under the proposed counting methodology are estimated as a 30% reduction in shown hydro in the 2019 State of the Resource Adequacy Market Report (“RA Market Report”). Based on recent indications from counterparties, monthly percentages of total shown imports from the RA Market Report are discounted by 30% to estimate import losses. ELCC impacts are calculated as the difference between the prior and updated ELCC percentages applied to 2020 NQC solar and wind resources.

527 MW for February to 1,224 MW for June.¹⁰ The PD would exacerbate the effects of these reductions, eliminating 597 MW of supply in February to 1,934 MW in September. Combined, these reductions create a net deficit in summer months ranging from 531 MW to 5,837 MW in September.

Figure 1. Estimated RA supply reductions due to recent and proposed rule changes

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2021 Generation Estimate	42,982	43,165	45,173	47,693	48,740	53,003	53,768	52,857	51,463	47,295	42,791	42,832
2021 Demand Requirement	36,510	35,540	34,568	37,382	41,723	46,963	50,711	51,026	51,542	42,590	36,452	37,632
Surplus / Deficit	6,472	7,625	10,605	10,311	7,017	6,040	3,057	1,831	(79)	4,705	6,339	5,200
CPUC Eligibility Reductions												
Hydro Losses	(635)	(527)	(758)	(689)	(795)	(1,209)	(1,224)	(1,193)	(1,119)	(750)	(630)	(630)
Import Losses	(663)	(597)	(624)	(521)	(824)	(1,082)	(1,630)	(1,686)	(1,934)	(1,281)	(640)	(729)
Solar Losses	410	110	807	(1,861)	(1,550)	(1,420)	(302)	(1,422)	(1,972)	(3,432)	(228)	26
Wind Losses	178	(296)	607	(365)	(365)	(916)	(431)	(368)	(733)	(61)	242	(120)
New Surplus / Deficit	5,762	6,315	10,638	6,875	3,482	1,413	(531)	(2,838)	(5,837)	(818)	5,083	3,747

Limiting available supply shifts the supply curve, increasing the cost of all RA. The 2018 Resource Adequacy Report shows that including imports in the stack reduced the weighted average price of *all* System-Only RA by \$0.25/kW-month.¹¹ With 77,166 MW of System-Only RA contracts reported for 2018-2022,¹² the savings to ratepayers of including these resources can be estimated at \$19.3 million, with the impacts concentrated in 2018 and 2019.¹³ Imposing this potential rate impact on customers is unjustified, particularly since the record does not demonstrate the need for the PD’s drastic limitation.

B. The Definition of “Resource Specific” Should Be Expanded to Include, at a Minimum, Individual or Aggregated Resource Pools That Are Verified as Uncommitted to Another BAA and Committed to the Commission’s RA Program

CalCCA appreciates Energy Division’s quest to verify that resource-specific resources are, indeed, resource-backed. But there are ways other than pseudo-ties and dynamic schedules to assure that capacity provided by individual or aggregated resources is unencumbered by another BAA and committed to the California RA market. As CalCCA proposed in comments, a

¹⁰ R.19-11-009, Proposed *Decision Adopting Local Capacity Obligations for 2021-202, Adopting Flexible Capacity Obligations for 2021, and Refining the Resource Adequacy Program*, May 22, 2020, at 21-22 and Ordering Paragraph 10 at 75.

¹¹ *2018 Resource Adequacy Report*, Aug. 2019, Tables 11 and 12 at 33.

¹² *Id.*, Table 12 at 33.

¹³ Based on the 2018 report, it appears that roughly 74% of the contracts used in analyzing system capacity prices were for Compliance Years 2018 and 2019. *Id.*, Table 6 at 23.

contract could be operationally validated as resource-backed contract, using telemetry or other operational data provided to the CAISO.¹⁴ *In addition to CAISO verification*, an attestation would be required stating that the product:

Cannot be curtailed for economic reasons, and either (a) is delivered on transmission that cannot be curtailed in operating hours for economic reasons or bumped by higher priority transmission or (b) specifies firm delivery point (*i.e.*, is not seller's choice).¹⁵

To further enforce the attestation, penalties could apply for failure to deliver using firm transmission. Finally, CAISO also could implement must-offer obligation requirements, including default energy bids as it does for pseudo-tied resources.¹⁶ These requirements would go far beyond relying solely on attestations for compliance.

The record provides evidence that expanding the definition of “resource specific” contracts to include operationally validated resources would increase the availability of import RA without introducing speculative supply. The Bonneville Power Administration (“BPA”) shares CalCCA’s concern that limiting the definition of resource-specific will significantly impact the availability of import RA from sources that have historically performed (such as BPA’s pool of hydro resources).¹⁷ BPA explains:

In Bonneville’s situation, the Pacific DC Intertie does not allow for dynamic transfers and the California-Oregon Intertie is limited to no more than 600MW of dynamic transfers in any hour. This 600 MW of dynamic transfer ability on the California-Oregon Intertie is determined and allocate [sic] to customers on a daily basis.¹⁸

BPA, however, “is capable of documenting that it delivers RA Import resources from the [Federal Columbia River Power System].”¹⁹ Bonneville continues:

The Commission should be aware of the significance of the recent agreements of many Western balancing authorities, including Bonneville, to participate in the Reliability Coordinator (RC) functions newly administered by the CAISO. The information needed to validate that RA Imports are backed by unencumbered

¹⁴ *Opening Comments of the California Community Choice Association on Track 1 Proposals*, Mar. 6, 2020, at 4-7 and Appendix A.

¹⁵ *Id.*, Appendix A.

¹⁶ *See* PD at 24 (*citing* DMM Track 1 Comments at 7).

¹⁷ *Comments of the Bonneville Power Administration on Track 1 Proposals*, Mar. 6, 2020, at 3-4.

¹⁸ *Id.* at 3, n.1.

¹⁹ *Id.* at 4.

resources is already provided to the RC and Bonneville can readily provide the same to the CPUC or CAISO. This capability supports the requirements under the CAISO's proposal for source specification requirements for aggregated generation projects and will provide the verification needed to ensure against speculative supply.²⁰

In short, the record provides direct evidence that a capacity product whose commitment to the California RA program can be *operationally* documented is available yet would be unnecessarily excluded from compliance showings without justification. The exclusion of these legitimate resources will create artificial scarcity in the RA market, which will force an unjustified wealth transfer from ratepayers to eligible RA suppliers. CalCCA's proposed operationally validated capacity product would enable BPA and suppliers with reliable, individual or aggregated resources to continue to participate in the RA program, reducing upward pressure on RA prices.

For these reasons, the Commission should expand the PD's definition of "resource specific" to include legitimate, resource-backed import capacity that can be operationally validated by the CAISO as unencumbered and committed to support California reliability.

III. THE COMMISSION SHOULD CLARIFY THE IMPORT RA RULES THAT WILL APPLY FOR PURPOSES OF 2019 AND 2020 COMPLIANCE

A. The Rules in Place Before D.19-10-021 Was Issued Should Apply to Determine Eligibility of Import RA Contracts for 2019 and 2020 Compliance

The PD unambiguously directs that the "adopted requirements for import contracts shall apply for the 2021 compliance year."²¹ It leaves ambiguity, however, surrounding which rules will be applied for purposes of 2019 and 2020 RA compliance. CalCCA requests clarification that the import RA requirements in place before the issuance of D.19-10-021, as then interpreted by the Energy Division Staff, will apply for 2019 and 2020. Any other solution would contravene the Commission's conclusion in D.05-10-042, consistent with the principles of due process, that fair notice to LSEs is required in adopting RA program rule changes.

CalCCA sought clarity on this question in its comments on the Rehearing Order,²² as the PD notes.²³ Specifically, CalCCA requested that the Commission:

²⁰ *Id.* at 5.

²¹ PD, Ordering Paragraph 7 at 54.

²² *California Community Choice Association Comments on Limited Rehearing of Decision 19-10-021*, Apr. 8, 2020, at 3-7.

²³ PD at 47.

[M]ake 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.²⁴

The PD appears to grant this request. The PD appropriately recognizes that it is “necessary to give LSEs and suppliers sufficient time to renegotiate or enter into new contracts based on the import RA rules adopted in this decision.”²⁵ It thus provides: “[t]he adopted rules *shall not apply* for the 2019 compliance year (to the extent that compliance has not been completely determined) or the 2020 compliance year.”²⁶ It does not, however, define “adopted rules” or specify which rules *will* apply. Consequently, further clarification is required to ensure adequate notice.

To give meaning to the “fair notice” requirement, the only reasonable interpretation of the PD’s conclusion regarding 2019 and 2020 compliance is that the import RA rules in place before issuance of D.19-10-021 will apply. The rules governing import RA have been in flux and uncertain since last July, when the Assigned Commissioner issued a ruling seeking comment on import RA rule changes. Without clear knowledge of where the rules ultimately would land, LSEs were required to make procurement decisions to meet their December 2019 month-ahead and annual 2020 compliance requirements. Indeed, D.19-10-021 was issued on October 17, 2019, changing compliance rules only two weeks before LSEs were required to make their 2020 showing and the same day the showing was required for December 2019. At this point, most, if not all, RA transactions shown for compliance had been completed.

Not only did D.19-10-021 fail to provide adequate notice to enable compliant 2019 and 2020 showings, the Commission’s legal error perpetuated uncertainty. The Commission issued the Stay Order on December 19, 2019, recognizing the “potential for harm to the parties in the event that the requirements of D.19-10-021 are modified....”²⁷ Then, on March 12, 2020, the Commission issued the Rehearing Order, requiring rehearing to address three legal errors: D.19-10-021 (1) altered, rather than clarified, the Commission’s earlier decisions,²⁸ (2) lacked a

²⁴ *Id.* at 3.

²⁵ PD at 48.

²⁶ PD at 47; Conclusion of Law 7 at 52; Ordering Paragraph 7 at 54.

²⁷ Stay Order at 1-2.

²⁸ PD at 5-7.

sufficient evidentiary record,²⁹ and (3) was vague in its use of key terms.³⁰ In a ruling that followed, the Administrative Law Judge directed further development of these issues in Track 1 of R.19-11-009.³¹ Wide-ranging proposals for modified import rules were then considered through comments in R.19-11-009. There remains no certainty, even as LSEs are procuring for Compliance Year 2021.

The procedural course of D.19-10-021 has undeniably left LSEs in limbo regarding December 2019 and 2020 compliance. The Commission has previously recognized that this type of uncertainty does not meet the requirement for “fair notice” in making rules changes to its RA program. In D.05-10-042, the Commission phased out the use of liquidated damages (“LD”) RA for RA compliance. It grandfathered existing LD contracts, however, on grounds that only the issuance of a final decision adopting the new rules provided “fair notice” to LSEs of their changed compliance requirements.³² CalCCA submits that providing notice through a final decision at the *end* of the procurement cycle, after the bulk of an LSE’s resources have been procured and only a couple of weeks ahead of compliance showings, does not constitute “fair notice” of the new requirements.

While an interpretation requiring “fair notice” in the form of final rules with a reasonable time for compliance is most consistent with past Commission decisions and due process requirements, the PD is susceptible to an alternative, erroneous interpretation. The PD proposes to lift the stay on D.19-10-021 and “supersede” the decision “on the issues for which rehearing was granted.”³³ Together, these directives suggest that D.19-10-021 will again become effective, as modified, on the effective date of the final decision. The decision will have had no effect between December 19, 2019, and the final decision, due to the Stay Order. The PD leaves unclear, however, the status of the decision between its original date of issuance – October 17, 2019, and the Stay Order.

It could be argued that D.19-10-021 was effective from its issuance until the Stay Order – the period during which both the December 2019 and annual 2020 RA compliance showings

²⁹ *Id.* at 7-8.

³⁰ *Id.* at 8-9.

³¹ *E-mail Ruling Setting Process and Schedule for Limited Rehearing of Decision 19-10-021*, Mar. 20, 2020, at 4.

³² D.05-10-042 at 63.

³³ PD, Ordering Paragraph 8 at 54.

occurred. Thus, an argument, albeit erroneous, could be made that D.19-10-021 applied to December 2019 and 2020 compliance. An argument making D.19-10-021 effective for *any* period, however, is not defensible because it was, by the Commission’s own acknowledgement, in legal error. Even though some elements of D.19-10-021 may not have been reheard, there has been no lawful, coherent modification of the import RA requirements as they existed before the Commission’s inquiry began in July 2019.

For these reasons, the Commission should modify the PD to ensure fair notice has been provided to all LSEs of changes to the import RA rules. Specifically, the Commission should conclude 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.”

B. The Commission Should Clarify the Historical Application of the Import RA Rules in Place Prior to D.19-10-021 to Conform to Underlying Decisions and Past Practices

Applying import RA rules in place before the adoption of D.19-10-021 for 2019 and 2020, as CalCCA proposes, makes it critical to clarify how these rules have historically been applied. The PD’s version of history, however, fails to align with the Commission decisions that created those rules. The Commission should modify the PD to correct this error.

The PD states, without any citation, that “[r]esource-specific RA imports have *historically* included only pseudo-tied or dynamically scheduled resources.”³⁴ The PD further references Energy Division’s representation that for non-resource-specific imports, “the Commission has historically allowed these import contracts to count as RA if they are backed by firm energy, based on the requirements adopted in D.04-10-035 and D.05-10-042.”³⁵ D.04-10-035 and D.05-10-042 established the pre-D.19-10-021 rules for import RA eligibility under the Commission’s RA program.³⁶ Nothing in either decision, however, even distinguishes between resource-specific and non-resource-specific resources, let alone mentions pseudo-tied or dynamically scheduled resources.

For purposes of 2019 and 2020, the Energy Division should be required to apply the pre-D.19-10-021 rules as it has in the past. If a specific contract type was deemed compliant in prior

³⁴ PD at 10.

³⁵ PD at 17.

³⁶ D.05-10-035 at 67.

periods, and the Energy Division cannot demonstrate that it rejected such contracts for compliance, similar contracts should be accepted for this transitional period. Indeed, LSEs' annual 2019 and 2020 filings, as well as 2020 month-ahead filings to date, have already been accepted by CAISO. Under these circumstances, invalidating *any* 2019 and 2020 import contracts at this point serves no reliability purpose, but only serves as a punitive action based on legal error.

IV. MULTI-YEAR IMPORT RA CONTRACTS EXECUTED BEFORE D.19-10-021 SHOULD BE GRANDFATHERED TO AVOID STRANDING VALUE AT RATEPAYERS' COST

As discussed in Section II, in D.05-10-042 the Commission grandfathered existing LD contracts as it eliminated these contracts for compliance under its RA program. The Commission reasoned that the grandfathering was required in order to give LSEs “fair notice” of the changed rules.³⁷

The same circumstances are presented for the PD’s consideration. The Commission proposes to change the requirements for import RA contracts, which will become effective upon adoption of the final decision. Multi-year import contracts were executed, however, prior to the issuance of D.19-10-021. And at the time they were executed, as in D.05-10-042, LSEs did not have fair notice of the requirements – *i.e.*, a final decision. Absent grandfathering, the final decision will destroy the value of the contracts, leading to unnecessary cost increases for ratepayers.

In addition, it is important to note the PD’s observation that the “Commission deemed it unnecessary to grandfather existing contracts since “the requirements at issue date back to Commission decisions from 2004, and thus are not new requirements.”³⁸ The Rehearing Order, however, concluded that the Commission’s claim that the requirements were not new was in error.³⁹ Neither D.19-10-021 nor the PD thus present valid grounds for rejecting CalCCA’s proposal for grandfathering of multi-year contracts executed prior to D.19-10-021.⁴⁰

³⁷ D.05-10-042 at 63.

³⁸ PD at 5.

³⁹ Rehearing Order at 7.

⁴⁰ See *Opening Comments of the California Community Choice Association on Track 1 Proposals*, Mar. 6, 2020, at 3.

Consistent with its own prior decision, and lacking any reasonable grounds for rejection, the Commission should modify the PD to adopt CalCCA's grandfathering proposal. The Commission should grandfather all import RA contracts executed prior to D.19-10-021 with terms that extend beyond 2020 *provided* the contracts comply with the import RA requirements in place at the time of their execution.

V. THE COMMISSION SHOULD CLARIFY THAT AN LSE MAY SHOW IMPORT RA FOR COMPLIANCE EVEN IF THE LSE IS NOT THE DIRECT IMPORTER

The PD requires that to qualify for RA compliance, a non-resource-specific energy contract must, among other things, provide for the "sale of energy delivery to the LSE specifically, not the CAISO generally...."⁴¹ CalCCA understands this requirement to foreclose contracts that simply place a CAISO bidding requirement on the supplier, rather than an actual delivery requirement. With this understanding, CalCCA requests clarification that the requirement is not intended to require the LSE to be the direct importer of the energy, only the ultimate buyer of the delivered energy. Requiring the LSE to be the importer is unnecessary and would inhibit the range of transaction structures available in the market.

VI. CONCLUSION

CalCCA appreciates the opportunity to submit these comments and requests adoption of the recommendations proposed herein. For all the foregoing reasons, the Commission should modify the proposed decision as provided in Appendix A.

Respectfully submitted,



Evelyn Kahl
General Counsel to the
California Community Choice Association

June 8, 2020

⁴¹ PD at 40; *see also* PD at 46, Conclusion of Law 4 at 52 (emphasis added).

APPENDIX A

PROPOSED CHANGES TO FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS

Findings of Fact

10. It is reasonable to define resource-specific imports to include (a) pseudo-tied resources; (b) ~~or~~ dynamically scheduled resources; and (c) individual and aggregated resource pools that the CAISO has verified are not committed to another BAA and are committed to the California RA program because they provide confidence that they will be available when needed and are not speculative supply. ~~these imports operate and have the same reliability benefits as internal generating units.~~

NEW. Adding penalties for individual or aggregated resource pools that are delivered using transmission that can be curtailed in operating hours for economic reasons or bumped by higher priority transmission will increase the certainty that the resource(s) will be available to meet California's reliability needs.

NEW. The CAISO's implementation of a MOO for all capacity resources qualifying for RA compliance would increase the certainty that the resource(s) will be available to meet California's reliability needs.

NEW. Failing to grandfather multi-year import contracts executed prior to D.19-10-021 for their initial term would reduce or eliminate the value of such contracts and increase costs to ratepayers.

13. The Commission has historically used CAISO supply plans and the NQC list to verify compliance with RA requirements. It is appropriate to require pseudo-tied and dynamically scheduled imports ~~resource-specific imports~~ to provide a resource ID that is listed on a matching CAISO supply plan and NQC list to verify compliance.

Conclusions of Law

1. Resource-specific resources should only include (a) pseudo-tied resources; (b) ~~or~~ resources that are dynamically scheduled into the CAISO market; and (c) individual and aggregated resource pools that the CAISO has verified are not committed to another BAA and are committed to the California RA program. Imports that do not qualify as a resource-specific import should be considered a non-resource-specific import.

2. An LSE using a pseudo-tied and dynamically scheduled imports ~~resource-specific import~~ should provide a resource-specific resource ID in its RA filing that is listed on a matching CAISO supply plan and on the Commission's NQC list.

NEW. For individual or aggregated resource pools, other than pseudo-tied and dynamically scheduled resources, to comply with RA program requirements: (a) the CAISO must operationally verify that the resource(s) is not committed to another BAA and is committed to the California RA program and (b) the supplier must provide an attestation, which the LSE will submit to the Energy Division staff for compliance, that the product: cannot be curtailed for economic reasons, and either (i) is delivered on transmission that cannot be curtailed in operating hours for economic reasons or bumped by higher priority transmission or (ii) specifies firm delivery point (i.e., is not seller's choice).

NEW. Energy Division Staff should present a proposal for penalties that would be applied to imports from individual or aggregated resource pools if those imports are delivered using transmission that can be curtailed in operating hours for economic reasons or bumped by higher priority transmission.

NEW. The due process requirement for adequate notice of changes in rules requires grandfathering multi-year import contracts executed prior to D.19-10-021 for their initial term.

NEW. The import RA requirements in place before the issuance of D.19-10-021, as then interpreted by the Energy Division Staff, shall apply for 2019 and 2020.

Ordering Paragraphs

1. A resource-specific import contract shall count towards meeting Resource Adequacy (RA) needs provided that:

(a) (i) The resource is either pseudo-tied or dynamically scheduled into the California Independent System Operator (CAISO) day-ahead and real-time markets; and (ii) ~~(b)~~ ~~The~~ load-serving entity provides a resource-specific resource ID in its RA filing that is listed on a matching CAISO supply plan and on the Commission's Net Qualifying Capacity list; or

(b) If the resource is an individual or aggregated pool of import resources:

(i) the supplier must demonstrate that the CAISO has physically verified that the resources are not committed to another BAA and are committed to the California RA program.

(ii) the supplier must attest that that the product cannot be curtailed for economic reasons, and either a/ is delivered on transmission that cannot be curtailed in operating hours for economic reasons or bumped by higher priority transmission or b/ specifies firm delivery point (i.e., is not seller's choice). And

(iii) the LSE must submit the suppliers attestations to the Energy Division staff for compliance.

NEW. Energy Division Staff shall present a proposal for penalties that would be applied to imports from individual or aggregated resource pools if those imports are delivered using transmission that can be curtailed in operating hours for economic reasons or bumped by higher priority transmission.

NEW. Future compliance for multi-year import contracts executed prior to D.19-10-021 shall be determined applying the import RA requirements in place before the issuance of D.19-10-021, as then interpreted by the Energy Division Staff

NEW. The import RA requirements in place before the issuance of D.19-10-021, as then interpreted by the Energy Division Staff, shall apply for 2019 and 2020.