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

Order Instituting Rulemaking to Establish
Policies, Processes, and Rules to Ensure
Reliable Electric Service in California in the
Event of an Extreme Weather Event in 2021.

R.20-11-003

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION
OPENING BRIEF**

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SUMMARY OF RECOMMENDATIONS

CalCCA's supply-side recommendations include:

- The Commission should encourage expedited procurement of resources available at net peak to a level equivalent to a 17.5 percent planning reserve margin (PRM) in the summer months of 2022 and 2023;
- Existing procurement already performed by load-serving entities (LSEs) to meet future needs that will come online by 2022 or 2023 must be counted toward procurement targets adopted in this proceeding to avoid penalizing early action;
- Because accelerated procurement of up to an additional 5,000 megawatt (MW) by summer 2022 may not be possible -- despite LSEs' best efforts -- the Commission should not introduce new penalties on LSEs for delays to Decision (D.) 19-11-006 procurement outside of their control;
- Given the limited supply of resources, penalties will be inevitable for at least some LSEs. Therefore, if the Commission adopts penalties for failure to accelerate procurement, then the Commission should direct centralized procurement through the investor-owned utilities (IOUs) to avoid unnecessary costs for customers and market disruption;
- The Commission must clarify the modified Cost Allocation Mechanism (CAM) for procurement mandated in D.21-03-056 and must also do so if the Commission adopts a procurement mechanism in which the IOUs procure on behalf of all benefiting customers within this phase of the proceeding;
- The Commission should not modify Resource Adequacy (RA) penalties for LSEs taking reasonable actions to meet RA requirements given the significant increase in penalties only recently adopted in D.21-07-014. Instead, the Commission should maintain existing penalties and adopt a system RA waiver for LSEs who demonstrate reasonable efforts to procure;
- The Commission should establish a process for obtaining more deliverable imports in excess of RA showings by revisiting existing RA import rules and authorizing procurement of deliverable imports up to the available Maximum Import Capability rights (MIC) left over after RA showings;
- The Commission should make the compliance with requirements for incremental procurement tradeable among LSEs to enable more efficient and cost-effective options to meet reliability needs by all LSEs; and
- The Commission should develop a more careful needs assessment to inform procurement needs and RA requirements to minimize the need for future emergency actions.

CalCCA's demand-side recommendations include:

- The Commission should not adopt an auto-enrollment program model for DR programs.

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**CALIFORNIA COMMUNITY CHOICE ASSOCIATION
OPENING BRIEF**

Pursuant to Rule 13.12 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure, and the schedule set forth in the *Assigned Commissioner’s Amended Scoping Memo and Ruling for Phase 2*, dated August 10, 2021, the California Community Choice Association¹ (CalCCA) submits this concurrent opening brief.

I. INTRODUCTION

On July 30, 2021, Governor Gavin Newsom signed an emergency proclamation ordering all energy agencies, including the Commission, to work with LSEs on “accelerating plans for the construction, procurement, and rapid deployment of new clean energy and storage projects to mitigate the risk of capacity shortages and increase the availability of carbon-free energy at all times of day.” The proclamation also directs the Commission to expand and expedite approvals

¹ California Community Choice Association represents the interests of 22 community choice electricity providers in California: Apple Valley Choice Energy, Baldwin Park Resident Owned Utility District, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

of demand response programs and other clean energy projects to reduce strain on energy infrastructure.²

The Commission commenced Phase 2 of this proceeding to examine ways to increase peak and net peak supply resources and reduce peak and net peak demand in 2022 and 2023.³

The Commission's Energy Division (ED) provided a set of proposals focused on demand reduction, smart thermostats, and utility scale storage, imports, and generation.⁴ CalCCA's Opening Brief focuses on supply-side solutions that can be expedited to meet these near-term needs and responds to an ED demand-side proposal on automatic customer enrollment into the Emergency Load Reduction Program (ELRP). In summary, CalCCA's supply-side recommendations include:

- The Commission should encourage expedited procurement of resources available at net peak to a level equivalent to a 17.5 percent planning reserve margin in the summer months of 2022 and 2023;
- Existing procurement already performed by load-serving entities to meet future needs that will come online by 2022 or 2023 must be counted toward procurement targets adopted in this proceeding to avoid penalizing early action;
- Because accelerated procurement of up to an additional 5,000 MW by summer 2022 may not be possible -- despite LSEs' best efforts -- the Commission should not introduce new penalties on LSEs for delays to D.19-11-006 procurement outside of their control;
- Given the limited supply of resources, penalties will be inevitable for at least some LSEs. Therefore, if the Commission adopts penalties for failure to accelerate procurement, then the Commission should direct centralized procurement through the IOUs to avoid unnecessary costs for customers and market disruption;

² Proclamation of a State of Emergency: <https://www.gov.ca.gov/wpcontent/uploads/2021/07/Energy-Emergency-Proc-7-30-21.pdf>.

³ *Assigned Commissioner's Amended Scoping Memo and Ruling for Phase 2*, Aug. 10, 2021 (Phase 2 Ruling).

⁴ *Energy Division Staff Concept Paper: Proposals for Summer 2022 and 2023 Reliability Enhancements*, Aug. 16, 2021 (Staff Concept Paper).

- The Commission must clarify the modified CAM for procurement mandated in D.21-03-056 and must also do so if the Commission adopts a procurement mechanism in which the IOUs procure on behalf of all benefiting customers within this phase of the proceeding;
- The Commission should not modify RA penalties for LSEs taking reasonable actions to meet RA requirements given the significant increase in penalties only recently adopted in D.21-07-014. Instead, the Commission should maintain existing penalties and adopt a system RA waiver for LSEs who demonstrate reasonable efforts to procure;
- The Commission should establish a process for obtaining more deliverable imports in excess of RA showings by revisiting existing RA import rules and authorizing procurement of deliverable imports up to the available MIC left over after RA showings;
- The Commission should make the compliance with requirements for incremental procurement tradeable among LSEs to enable more efficient and cost-effective options to meet reliability needs by all LSEs; and
- The Commission should develop a more careful needs assessment to inform procurement needs and RA requirements to minimize the need for future emergency actions.

CalCCA’s demand-side recommendations include:

- The Commission should not adopt an auto-enrollment program model for DR programs.

These changes will maximize the potential for bringing in new supply and reducing peak and net-peak demand in the California Independent System Operator (CAISO) balancing authority area (BAA) for Summer 2022 and 2023 to meet net peak requirements.

II. SUPPLY-SIDE RECOMMENDATIONS

A. The Commission Should Encourage Expedited Procurement of Resources Available at Net Peak to a Level Equivalent to a 17.5 Percent PRM in the Summer Months of 2022 and 2023

CalCCA supports a “best-efforts” approach to expedite procurement to meet emergency needs for summer 2022 and 2023. Under normal circumstances, a careful and well-vetted analysis, such as a loss of load expectation (LOLE) analysis, and development of proposals through the RA

proceeding would inform any Commission-ordered procurement or modifications to RA requirements with sufficient lead time to reasonably allow construction of new resources. However, given the expedited timeframe of this proceeding, CalCCA supports a procurement mechanism in which LSEs make best efforts to procure additional supply to support summer reliability, similar to the procurement authorized in D.21-03-056.⁵ This approach is appropriate for emergency procurement given the uncertainty around how much additional supply is available or can be accelerated in such a short timeframe. This standard should apply to all LSEs to procure or expedite their own procurement of resources available to summer 2022 and 2023 needs to maximize the likely expedited procurement and a more diverse range of solutions.

The CAISO submitted two proposals that would increase RA requirements for LSEs in 2022 and 2023. The first of CAISO's proposals recommends the Commission set the system RA requirements to meet demand and the PRM at 8:00 p.m. for June through October, in addition to the current system RA requirement based on the gross monthly peak.⁶ The second proposal would increase the PRM from 15 percent to 17.5 percent to account for forced outages and the increased potential for extreme weather events.⁷

CalCCA supports LSEs making best efforts to bring new resources to the BAA equivalent to a 17.5 percent PRM with resources available at net peak, but cautions the Commission against making modifications to RA requirements within this Phase 2 of the

⁵ *Decision Directing Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company to Take Actions to Prepare for Potential Extreme Weather in the Summers of 2021 and 2022*, March 25, 2021 (D.21-03-056).

⁶ *Opening Testimony of the California Independent System Operator Corporation*, Section III, Sept. 1, 2021 (CAISO (Billinton)), at 2:7 – 2:16.

⁷ *Opening Testimony of the California Independent System Operator Corporation*, Section IV, Sept. 1, 2021 (CAISO (Mohammed-Ali)), at 12:3 – 12:5.

proceeding.⁸ Given the tightly constrained RA market and short timeframe to bring RA-eligible resources online, carrying the higher procurement needs into the RA program through higher RA requirements could effectively penalize LSEs – most importantly, their customers – for failing to show enough RA resources despite LSEs best efforts. This is because enough new supply will likely not yet be available or circumstances beyond the control of the LSE prevent resources from coming on-line in an expedited manner. These penalties could come in the form of RA penalties administered by the Commission or capacity procurement mechanism costs for individual deficiencies.

RA requirements and associated penalties are important components of the RA program, as they ensure all LSEs procure their share of resources needed to support reliability. However, all penalties, whatever their nature, will ultimately flow through to customers. The Commission has already taken steps to assign appropriate penalties by increasing RA penalties in modifications made through D.21-06-029 and D.20-06-031.⁹ Additionally, the availability of new RA capacity in such a short timeframe is unlikely. Therefore, increasing penalties will likely not provide appropriate incentives to procure but rather, penalize LSEs with few options to procure. Increasing customers' electricity costs further without a beneficial result only exacerbates California's already-high rates. The Commission should not adopt new RA requirements but instead encourage LSEs to use best efforts to expedite procurement of resources available at net peak to effectively meet a 17.5 percent PRM without penalizing them if they are unable to do so given the tight timeframe.

⁸ *Reply Testimony of Marie Y. Fontenot on Behalf of California Community Choice Association*, Sept. 10, 2021 (CalCCA Reply Testimony (Fontenot)) at 3:6 – 5:18.

⁹ *Decision Adopting Local Capacity Obligations for 2021-2023, Adopting Flexible Capacity Obligations for 2021, and Refining the Resource Adequacy Program*, June 25, 2020 (D.20-06-031) at 60-61; *Decision Adopting Local Capacity Obligations for 2022-2024, Flexible Capacity Obligations for 2022, and Refinements to the Resource Adequacy Program*, June 24, 2021 (D.21-06-029) at 59-60.

Given the timeframe of this effort, it is clear many LSEs will not be capable of adjusting their RA portfolios or existing contracts to account for higher RA requirements on such a narrow timeline. In Opening Testimony, several parties representing developers, including the California Energy Storage Association (CESA),¹⁰ LS Power,¹¹ and Independent Energy Producers Association (IEP),¹² emphasize that it will be difficult to procure new resources or accelerate existing planned resource build by Summer 2022. Additionally, several parties, including the ED,¹³ CESA,¹⁴ and LS Power,¹⁵ proposed ways to count resources ineligible for RA in procurement ordered in this phase of the proceeding given they could provide additional MW more quickly. This indicates new procurement that may result from this phase of the proceeding may not be eligible to count towards the new requirement the CAISO proposes. Therefore, the Commission should direct LSEs to make their best efforts to procure resources that can meet net peak needs at a level equivalent to a 17.5 percent PRM but should not adopt a new RA requirement.

B. Existing Procurement Already Performed by LSEs to Meet Future Needs That Will Come Online by 2022 or 2023 Must be Counted Toward Procurement Targets Adopted in this Proceeding to Avoid Penalizing Early Action

CalCCA and other LSEs have demonstrated that LSEs are taking reliability needs extremely seriously and efforts already underway have expedited procurement to the extent possible above existing procurement mandates to support summer reliability even before these

¹⁰ *Opening Testimony of Jin Noh on Behalf of the California Energy Storage Alliance*, Sept. 1, 2021 (CESA (Noh)), at 9:4-9:16.

¹¹ *Prepared Phase 2 Opening Testimony of Sandeep Arora on Behalf of LS Power Development, LLC*, Sept 1, 2021 (LS Power (Arora)), at 2-4.

¹² *Prepared Testimony of Scott Murtishaw on Summer 2022 and 2023 Reliability Enhancements on Behalf of the Independent Energy Producers Association*, Sept. 1, 2021 (IEP (Murtishaw)), at 1:25-2:8.

¹³ Staff Concept Paper at 22-25.

¹⁴ CESA (Noh) at 27:1-29:19.

¹⁵ LS Power (Arora) at 5-6.

concerns were raised in this proceeding. As Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) note, ED’s recent update on D.19-11-016 progress found that all 25 LSEs demonstrated effort to meet their Tranche 1 obligations, collectively over-procuring for August 1, 2021.¹⁶ Further, in its Opening Testimony, CalCCA provided data on procurement efforts for 2022 and 2023 among CalCCA members that demonstrated a similar trend for 2022 and 2023 procurement.¹⁷ Based on new power purchase agreement (PPA) data provided by its member CCAs, CalCCA estimates that its members will exceed the D.19-11-016 procurement requirements by 208 September Net Qualifying Capacity (NQC) MW in 2022, and 649 September NQC MW in 2023. The data incorporates project delays and cancellations reported by the member CCAs. Table 1 below shows the derivation of these values.

Table 1: CCA Procurement for D.19-11-016 Mandate, by resource type (Sep NQC MW)¹⁸

| | 2022 | 2023 |
|---|------------|-------------|
| Hybrid Solar + Storage | 352 | 911 |
| Standalone Storage | 253 | 253 |
| Wind | 137 | 142 |
| Solar | 61 | 139 |
| Geothermal | 12 | 12 |
| Total NQC MW (sum of lines above) | 814 | 1457 |
| Total D.19-11-016 Procurement Requirement for CCAs | 606 | 808 |
| CCA Procurement in excess of D.19-11-016 requirement | 208 | 649 |

¹⁶ *Pacific Gas and Electric Company Emergency Reliability Order Instituting Rulemaking Errata Testimony*, Chapter 9, Sept. 1, 2021 (PG&E Errata Testimony (Clegg, Wyspianski)), at 9-2:3 to 9-2:19; *Direct Testimony of Southern California Edison Company – Phase 2*, Section III.C., Sept. 1, 2021 (SCE Direct Testimony (W. Walsh)), at 77:7-77:12.

¹⁷ *Direct Testimony of Lauren Carr, Fred Taylor-Hochberg, and Marie Y. Fontenot on Behalf of California Community Choice Association*, Chapter I, Sept. 1, 2021 (CalCCA Direct Testimony (Carr, Taylor-Hochberg), 3:20-4:3).

¹⁸ This table converts nameplate values to NQC values using the September tech factors from the 2021 NQC list, available at <http://www.caiso.com/Documents/NetQualifyingCapacityList-2021.xlsx>. Storage resources receive their nameplate capacity as NQC, unless they are less than four hours, in which case they are derated by (duration in hours / 4 hours). As a conservative assumption, hybrid resources receive only the battery’s capacity as NQC—the associated generating unit is ignored.

These excess amounts should count towards any new procurement requirement, if any.

Additionally, if resources CCAs procure to meet the IRP mid-term reliability requirements in D.21-06-035 can be expedited to reach commercial operation prior to summer 2022 and 2023, those should count as well.

C. Because Accelerated Procurement of Up to an Additional 5,000 MW by Summer 2022 May Not Be Possible -- Despite LSE's Best Efforts -- The Commission Should Not Introduce New Penalties on LSEs for Delays to D.19-11-006 Procurement Outside of Their Control

The Assigned Commissioner's Amended Scoping Memo and Ruling for Phase 2 (Phase 2 Ruling) cites a summer reliability stack analysis conducted by the California Energy Commission (CEC) that estimates the potential gap between supply and demand under extreme weather conditions of up to 5,000 MW.¹⁹ While CCAs will make their best efforts to expedite procurement mandated in D.19-11-016, it may not be possible to accelerate new resource build to meet targets adopted in this proceeding given the extremely short timeline and barriers outside of the control of the LSE that can create project delays. Therefore, the Commission should not adopt the proposal in the Staff Concept Paper that would apply fixed or capacity-based penalties to LSEs for not bringing resources online in accordance with the timelines in D.19-11-016.²⁰ Penalties that apply retroactively on contracts already executed do not allow LSEs to consider penalties in their risk assessments when selecting projects under an expedited timeline. The result then is a contract in which due dates and consequences may not match the new penalties adopted and may leave the LSE with few or no options to implement the new generation in a manner that is compliant with new penalty mechanisms. Further, CalCCA agrees with PG&E²¹

¹⁹ Phase 2 Ruling at 2-3.

²⁰ Staff Concept Paper at 21-22.

²¹ PG&E Errata Testimony (Clegg, Wyspianski), at 9-1:27 to 9-2:2.

and SCE²² that applying penalties retroactively to procurement already underway or complete could have negative impacts, including the need to amend contracts to account for the new penalty framework. This could result in increased pricing to account for risks outside the LSE's control or risk the development of the project by opening the contract to renegotiation.

Additionally, projects may experience delays that make it infeasible to meet targeted online dates despite LSEs contracting with project developers up to their procurement requirement to achieve commercial operation as expeditiously as possible. While LSEs may execute contracts with project developers with delay provisions, circumstances outside the control of the LSE may impact commercial online dates. These circumstances can include supply-chain problems, transmission interconnection delays, or COVID-19 impacts, among others. CalCCA's opening testimony provides recent examples of delays on projects contracted by LSEs to comply with expedited procurement mandates demonstrate situations outside an LSEs control can impact project schedules despite LSE compliance with procurement mandates.²³ Both PG&E and SDG&E submitted advice letters on July 23, 2021 informing the Commission of delays preventing projects from meeting targeted online dates of August 1, 2021.²⁴ These projects were contracted and approved to meet procurement obligations under D.19-11-016 and had targeted online dates of August 1, 2021. Both LSEs complied with the procurement requirement set forth in the Decision but did not have direct control over project development and the delays that prohibited commercial operation of the projects by the August

²² SCE Direct Testimony (W. Walsh), at 76:7-77:6.

²³ *Direct Testimony of Lauren Carr, Fred Taylor-Hochberg, and Marie Y. Fontenot on Behalf of California Community Choice Association*, Chapter II, Sept. 1, 2021 (CalCCA Direct Testimony (Fontenot)), 8:24-8:12.

²⁴ See PG&E AL Notification Regarding Delay of Projects Approved Under Decision 19-11-016, July 23, 2021, and SDG&E AL Notification Regarding Delay of Projects Approved Pursuant to Decision 19-11-016, July 23, 2021.

1, 2021 deadline. PG&E cites impacts of the COVID-19 pandemic and supply chain disruptions, both impacts outside of their control, for project delays.²⁵ These recent examples demonstrate that penalties for project delays may not result in projects meeting their target online dates because delays are not driven by the procuring entity. The Commission should not administer penalties to LSEs who took reasonable actions to procure if projects are delayed by actions or circumstances that are not controllable by the LSE as the procuring entity.

Additionally, there is no evidence LSEs are not taking reasonable efforts to procure to the D.19-11-016 requirements or that LSEs will be short on their 2022 or 2023 obligations. Procurement progress documented in section B above demonstrates LSEs are on track to over-procure relative to their D.19-11-016 requirements. For all the reasons stated above, the Commission should not adopt penalties for delays to D.19-11-016 procurement or increase penalties for RA deficiencies.

D. Given the Limited Supply of Resources, Penalties will be Inevitable for at Least Some LSEs. Therefore, if the Commission Adopts Penalties for Failure to Accelerate Procurement, then the Commission Should Direct Centralized Procurement Through the IOUS to Avoid Unnecessary Costs for Customers and Market Disruption

Expedited procurement or any additional procurement (*e.g.*, additional accelerated mandated procurement, increased RA requirements, or an increased PRM) under tight time constraints will place significant pressure on the market to provide those resources. As described in section C above, penalties are unlikely to arrive at the desired outcome and may disrupt procurement already underway or completed. CalCCA strongly recommends the Commission not adopt new penalties in this proceeding. However, if the Commission does implement additional procurement or subject LSEs to penalties within this proceeding, it should do so for

²⁵ See PG&E AL Notification Regarding Delay of Projects Approved Under Decision 19-11-016, July 23, 2021.

2022 only and reassess them in 2023 once more information about procurement and reliability needs are known.²⁶

The Commission must consider the significant impact to the market of having multiple LSEs compete for limited resources or the expedited operation of already procured resources. This impact is likely to increase market prices and will unnecessarily increase costs for customers. The potential to expedite new resource commercial operation will require selection from a limited set of resources. These resources will already be in the interconnection queue, will likely have already begun if not nearly completed siting and licensing, as well as be significantly under way in supplying the necessary assets. Resources not at this advanced stage are unlikely to be able to achieve the dates contemplated within this proceeding. With a large number of LSEs seeking a limited number of resources, solicitations will be complicated as the sellers will be making offers to multiple entities and making decisions at differing times. Under normal solicitations, a resource dropping out of a solicitation is replaced by other offers. In this case, there may not be any other viable offers to complete the solicitation. Such a process will be inefficient in controlling customer costs and may not be effective in procuring the necessary quantity. Therefore, if the Commission determines additional or expedited procurement and penalties are necessary for 2022, then the Commission should consider centralizing procurement for the amount needed in 2022 using the three IOUs with appropriate allocation of costs and benefits through the cost allocation mechanism (CAM). It should then reassess if penalties and centralized procurement are needed in 2023.²⁷

²⁶ CalCCA Direct Testimony (Fontenot), 11:5-11:15.

²⁷ *Id.*, 11:16-11:19.

E. The Commission Must Clarify the Modified CAM for Procurement Mandated in D.21-03-056 and Must Also Do So if the Commission Adopts a Procurement Mechanism in Which the IOUs Procure on Behalf of all Benefiting Customers Within this Phase of the Proceeding

Within D.21-03-056, the Commission adopted a PRM of 17.5 percent applicable to the three IOUs that were to procure on behalf of all customers. In doing so, the Commission determined that for 2021 and 2022, the IOUs should allocate the costs associated with those contracts through CAM but since only the IOUs would have a 17.5 percent PRM for RA, the RA attributes of the contracts would remain with the IOUs. Finally, D.21-03-056 allowed for procurement of contracts with durations that would extend beyond 2022 while the 17.5 percent target would not extend beyond 2022. There is therefore a significant question regarding what should happen to the costs and benefits of those resources beginning in 2023 should any of those contracts continue beyond 2022. The Commission must therefore clarify what will happen to the modified CAM for D.21-03-056 procurement beyond the timeframe contemplated within that decision so that the costs and benefits are fairly allocated and cost shifts do not occur.

If the Commission adopts a procurement mechanism in this Phase 2 similar to that in D.21-03-056, in which the IOUs procure on behalf of all benefiting customers, the Commission must provide limitations on the modified CAM treatment like those used in D.21-03-056 for resources procured for longer than 2022 and 2023. As stated in CalCCA's reply testimony, if the Commission adopts an IOU-only procurement mechanism, CalCCA recommends the modified CAM treatment for these resources during the period of emergency procurement through 2023.²⁸ Thereafter, the Commission must determine how costs for those resources should be recovered.

²⁸ *Reply Testimony of Marie Y. Fontenot on Behalf of California Community Choice Association*, Sept. 10, 2021 (CalCCA Reply Testimony (Fontenot)) at 7:1 – 8:10.

The simple options would be to either make the resource a bundled load asset or to use a traditional CAM where not only the costs are allocated but so are all the benefits. Such clarification would be necessary in this proceeding if the Commission opts for any form of modified CAM treatment for the period of this expedited procurement in 2022 and 2023. In such a case, the Commission should clarify what happens to such costs in 2024 in addition to what will happen to cost allocation of the authorized D.21-03-056 procurement.

F. The Commission Should Not Modify RA Penalties for LSES Taking Reasonable Actions to Meet RA Requirements Given the Significant Increase in Penalties Only Recently Adopted in D.21-07-014. Instead, the Commission Should Maintain Existing Penalties and Adopt a System RA Waiver for LSES who Demonstrate Reasonable Efforts to Procure

The Staff Concept Paper asks parties to consider doubling penalties for LSEs who may be short in meeting their RA requirements in August and September 2022.²⁹ This proposal is premature given the modifications made to the penalty structure in D.21-06-029 and does not address the root causes of reliability risks. D.20-06-031 raised the penalty price for failures to meet month-ahead system RA obligations in summer months from \$6.66/ kilowatt (kW)-month to \$8.88/kW-month.³⁰ The Commission subsequently adopted D.21-06-029, which declined to increase the overall penalty price and instead introduced a tiered penalty structure in which LSEs accrue points for each month of a deficiency.³¹ LSEs with one to five points fall into Tier 1 and pay the applicable RA penalty in \$/kW-month; LSEs with six to ten points fall into Tier 2 and pay twice the applicable RA penalty; and LSEs with 11 or more points fall into Tier 3 and pay three times the applicable RA penalty. This new tiered structure is effective for the 2022 RA compliance year.

²⁹ Staff Concept Paper at 22.

³⁰ D.20-06-031 at 60-61.

³¹ D.21-06-029 at 59-60.

Testimony from CalCCA³² and other parties including the Public Advocates Office (Cal Advocates),³³ SCE,³⁴ PG&E,³⁵ CESA,³⁶ LS Power,³⁷ and the Western Power Trading Forum (WPTF)³⁸ caution against modifying the RA penalty structure in this proceeding. Parties cite several important drivers for their reasoning: (1) recent modifications to the RA penalty structure adopted in D.21-07-014; (2) factors outside resource developers' and LSEs' control that create project delays; (3) increased ratepayer costs of additional penalties; and (4) existing market signals to procure additional supply. Once the new penalty structure is in place, LSEs will already face doubled, or even tripled, penalty prices if they accrue six or more points and the effects of this change has yet to be analyzed. The proposal in the Staff Concept Paper would further penalize LSEs who do not meet their RA requirements by doubling penalties for LSEs short in meeting their RA requirements in August and September 2022. This proposal is premature given the Commission and stakeholders have not yet had the opportunity to assess the impact of the new penalty structure adopted in D.21-06-029.

Further, making RA penalties more punitive when electric supply is already tight will not result in additional RA procurement; this approach will only increase the costs to consumers without a commensurate benefit. RA deficiencies cannot be attributed to inadequate penalties but rather scarce market conditions and regulatory decisions that hinder LSEs' ability to meet their

³² CalCCA Direct Testimony (Fontenot), 9:15 – 10:19.

³³ *Public Advocates Office Prepared Testimony Order Instituting Rulemaking to Establish Policies, Processes, and Rules to Ensure Reliable Electric Service in California in the Event of an Extreme Weather Event in 2021*, Chapter 3, Sept. 1, 2021, (Cal Advocates Prepared Testimony (Navis)) at 3-2:3 - 3-3:9

³⁴ SCE Direct Testimony (W. Walsh), at 78:4-78:14.

³⁵ PG&E Errata Testimony (Clegg, Wyspianski), at 9-3:5 to 9-3:17.

³⁶ CESA (Noh) at 11:11-12:10.

³⁷ LS Power (Arora) at 7-8.

³⁸ *Western Power Trading Forum Phase 2 Opening Testimony*, Sept. 1, 2021 (WPTF Opening Testimony (Klatt)) at 3-4.

system RA obligations. Increasing the RA requirement to 17.5 percent, particularly during the net load peak hours, is highly likely to require not only the procurement of all existing resources but also the build of new resources as well. A penalty for RA will therefore be a penalty for failing to meet the procurement imposed here. As discussed in section II.C, with a limited field of resources that can meet such a need, it is not likely feasible that all LSEs will be able to meet the procurement requirements. A penalty under such circumstances is not ensuring reliability but rather penalizing those that are unable to obtain capacity that could not be provided in the first place. Therefore, the Commission should adopt a system RA waiver process, similar to the one already in place for local RA, for LSEs who demonstrate reasonable efforts to procure system RA. In its opening testimony, SCE suggested that if the Commission increases RA penalties, the Commission should allow LSEs to file waivers demonstrating commercially reasonable efforts to meet RA obligations, including for system resource adequacy, citing market-level scarcity during summer months.³⁹ CalCCA agrees with SCE that there is merit in a system RA waiver process and supports its adoption independent of new penalties or RA requirements.

Given current RA market tightness, the Commission should adopt a system RA waiver process that follows the same waiver process that exists for local regardless of the Commission's decision on penalties and RA requirements in this phase of the proceeding. This proposal presents little risk, given the Commission would not grant a waiver unless the LSE demonstrated reasonable actions were taken to meet RA obligations. For these reasons, CalCCA proposes a system waiver be a permanent element of the RA program. CalCCA supported this approach in reply testimony and has long advocated for a system RA waiver process similar to the existing local RA waiver process given RA market tightness.⁴⁰ A system RA waiver process is necessary

³⁹ SCE Direct Testimony (W. Walsh), at 78:14 - 78:17.

⁴⁰ CalCCA Reply Testimony (Fontenot) at 6:2 – 6:18.

because penalizing LSEs who, despite commercially reasonable efforts, are unable to meet their requirements will not add capacity to the market in the near term. Until the supply margin increases in the RA market, it will remain difficult if not impossible to obtain RA contracts that fulfill obligations at a reasonable price.

G. The Commission Should Establish a Process for Obtaining More Deliverable Imports in Excess of RA Showings by Revisiting Existing RA Import Rules and Authorizing Procurement of Deliverable Imports Up to the Available MIC Left Over After RA Showings

CalCCA encourages the Commission to make imports – the only low-hanging fruit of any sizeable magnitude – a focal point of its efforts to ensure the state is resourced for 2022 and 2023. Contracting with imports up to the available MIC after RA showings is likely one of the few sources of new resources available to meet procurement requirements given the accelerated timeframe of this proceeding. CalCCA’s opening testimony recommended two modifications to existing import RA requirements that would apply for imports procured to meet any summer 2022 and 2023 emergency procurement requirements adopted in this proceeding:

- Do not apply the requirement to bid zero dollars or below for year 2022 and 2023; and
- Allow LSEs to meet emergency reliability procurement targets by contracting with imports after the RA showings deadline up to the available unused MIC.⁴¹

These modifications will maximize LSEs’ ability to secure these imports for California in an increasingly constrained market, rather than hoping that economic imports show up in the market when needed.

Given the challenges with building new resources on such an expedited timeframe, the Commission must ensure that its requirements for imports are not overly restrictive – driving the resources to contract in alternative markets. D.20-06-028 requires RA imports to bid at or below

⁴¹ CalCCA Direct Testimony (Fontenot), 5:12-5:18.

zero in the availability assessment hours beginning for RA year 2021.⁴² As California continues to face stressed summer grid conditions, so do other regions across the west and this requirement hinders California LSEs' ability to contract with imports for RA. As the Western Electricity Coordinating Council's (WECC) August 2020 Heatwave Event Analysis Report finds, increased demand during summer months across the Western Interconnection has created more competition for available generation.⁴³ Requirements on RA imports to bid zero dollars during the net peak hours limit the ability for California LSEs to competitively contract with imports given opportunities for imports to contract elsewhere in western regions without such bidding requirements. While this requirement is intended to ensure the imports are supported by a physical resource that will deliver when dispatched, it may reduce the pool of suppliers willing to offer imports to California. Given it may not be possible to expedite new procurement within the timeframe of this proceeding to meet emergency procurement targets, the Commission should limit barriers to contracting with imports by not imposing bidding requirements on imports resources procured to meet orders in this phase of the proceeding.

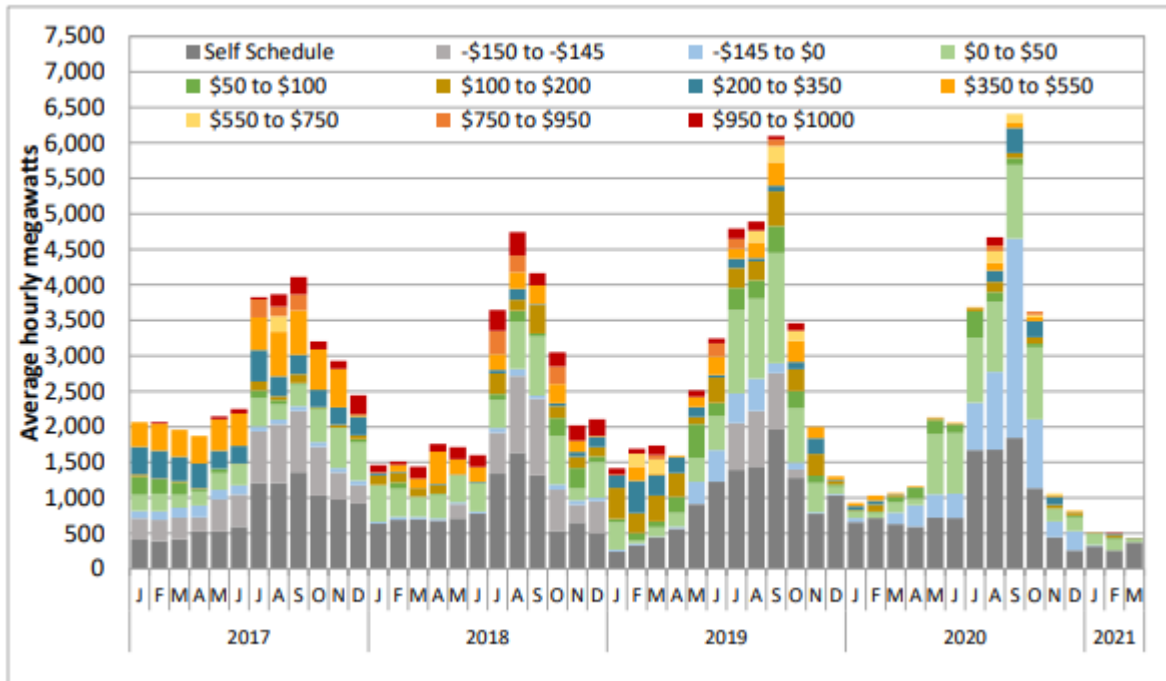
CalCCA's opening testimony cites to the CAISO's Department of Market Monitoring's (DMM) First Quarter Report on Market Issues and Performance that demonstrates a "dramatic decline" in the quantity of RA import bids in the first quarter of 2021 compared to the first quarter of previous years.⁴⁴ Figure 1 below taken from DMM's report shows the quantity and price of RA import bids into the CAISO market through the first quarter of 2021.

⁴² *Decision Adopting Resource Adequacy Import Requirements*, June 25, 2020 (D.20-06-028).

⁴³ CalCCA Direct Testimony (Fontenot), 5:20-6:2.

⁴⁴ *Id.*, 6:9-7:3.

Figure 1: Average Hourly Resource Adequacy Imports by Price Bid



Source: CAISO DMM, First Quarter Report on Market Issues and Performance, June 9, 2021, at 20.

This trend is especially concerning given the emergency conditions California faces in the coming summers. Imports contracted for 2022 and 2023 to meet procurement orders in this proceeding should not be subject to the zero-dollar bidding requirements adopted in D.20-06-028 to allow LSEs to more competitively contract during this time of strained supply.

In addition, the Commission should adopt CalCCA’s proposal in opening testimony that would ensure deliverability of imports counting towards emergency procurement targets so those imports procured above those shown for RA can reliably deliver to CAISO load.⁴⁵ Including firm imports above MIC limits as eligible resources could result in relying on undeliverable imports to meet emergency procurement targets. CalCCA’s proposal would authorize LSEs to procure additional imports *after* RA showings, up to the amount available MIC that was not used for

⁴⁵ CalCCA Direct Testimony (Fontenot), 7:8-7:15.

monthly RA showings. Doing so would obviate the need for LSEs to procure additional MIC or take MIC from their own portfolio and then determine the value of that MIC, while still ensuring the imports procured are deliverable. By procuring imports after the month-ahead showing process, the amount of MIC not used for RA showings will be known, indicating a high probability that a firm energy import at that location would flow to the CAISO load.

H. The Commission Should Make the Compliance with Requirements for Incremental Procurement Tradeable Among LSEs to Enable More Efficient and Cost-Effective Options to Meet Reliability Needs by All LSEs

The Commission should adopt CalCCA's proposal in opening testimony to make compliance with any procurement requirements adopted in this proceeding tradable among LSEs.⁴⁶ When addressing potentially small procurement requirements by multiple LSEs with relatively small loads compared to the total, it is critical that the Commission allow entities to work together to procure resources to meet the total need. The most practical manner to do this is to allow LSEs to trade their compliance with procurement requirements. Allowing such a mechanism will enable LSEs with short positions to sell their compliance credit to an entity with a long position such that the total need of customers can be most effectively procured. Indeed, this best mimics the result in a market with only a few entities procuring resources.

I. The Commission Should Develop a More Careful Needs Assessment to Inform Procurement Needs and RA Requirements to Minimize the Need for Future Emergency Actions

The Phase 2 Ruling cites a summer reliability analysis conducted by the CEC that estimates the potential gap between supply and demand under extreme and average weather conditions.⁴⁷ While this stack analysis provides useful information about potential supply conditions under certain assumptions, it falls short of answering the question of how much

⁴⁶ CalCCA Direct Testimony (Fontenot), 11:22-12:2.

⁴⁷ Phase 2 Ruling at 2-3.

additional procurement is needed for summer 2022 and 2023. This analysis projects an additional 600 MW to 5,200 MW of resources may be needed to ensure reliability during the peak and net-peak hours of summer 2022. These figures represent approximately 1 to 11 percent of CAISO peak load in 2020.⁴⁸ This large range highlights the limits of stack analyses — it is not clear how to translate this range into a procurement requirement, nor is it clear the level of reliability risk achieved by procuring somewhere within this range.

Subsequently, the CEC issued a Midterm Reliability Analysis & Incremental Efficiency Improvements to Natural Gas Power Plant (Mid-Term Reliability) loss-of-load expectation (LOLE) analysis that examined years 2022-2026 on August 30, 2021. As CalCCA advocated in its opening testimony, a LOLE study should be used to inform procurement needs going forward, rather than stack analyses.⁴⁹ An LOLE analysis will more accurately identify the level of reliability achieved by different levels of procurement, informing future procurement decisions. allowing parties to better assess the balance between reliability and affordability. Such analysis can also inform the PRM to ensure the RA program plans for the target level of reliability and informs the level of expenditure of rate payer funds for new procurement needed to meet that target.

CalCCA urges the Commission to prioritize development and consideration of a robust LOLE analysis like the Mid-Term Reliability Analysis to inform future procurement and planning targets. These actions will minimize the need to take emergency actions in the future.

⁴⁸ CalCCA Direct Testimony (Carr, Taylor-Hochberg) at 2:22-2:25.

⁴⁹ *Id.* at 3:12-3:19.

III. DEMAND-SIDE RECOMMENDATIONS

A. The Commission Should Not Adopt an Auto-Enrollment Program Model for Demand Response (DR) Programs

The Staff Concept Paper proposes to automatically enroll all residential customers not currently enrolled in a supply-side DR program into the IOU-run ELRP.⁵⁰ CalCCA agrees with Marin Clean Energy (MCE) that the Commission should not adopt this proposal.⁵¹ An auto-enrollment design would (1) create a significant market barrier to DR program development, (2) cause increased customer confusion and resulting customer disengagement, (3) have a limiting effect on the potential load reduction impact for certain customer segments, and (4) discriminate against non-IOU DR providers.

CalCCA agrees with MCE that “doubling down” on the ELRP by auto-enrolling all residential customers will not improve the program’s effectiveness.⁵² Instead, it will diminish each CCA’s ability to deploy their own DR programs, which may be more effective or preferred by customers over ELRP. This is especially true because disenrolling customers from IOU programs has proven to be cumbersome and confusing for customers, leaving them unable to participate in alternative programs that may result in superior performance.⁵³ Instead, the Commission should allow customers to take advantage of alternative programs that may be more effective by not auto-enrolling them in ELRP. This would allow for the continued growth and success of CCA demand flexibility programs.

⁵⁰ Staff Concept Paper at 5.

⁵¹ Marin Clean Energy Prepared Direct Testimony of Alice Havenar-Daughton in Rulemaking 20-11-003, Sept. 1, 2021 (Direct Testimony (Havenar-Daughton)) at 3-2:13 to 3-3:5.

⁵² Direct Testimony (Havenar-Daughton) at 3-3:13 to 3-3:18.

⁵³ Direct Testimony (Havenar-Daughton) at 3-4:3 to 3-4:14.

IV. CONCLUSION

CalCCA appreciates the opportunity to work with the Commission and parties to maintain summer reliability in the coming years. For the foregoing reasons, the Commission should adopt the recommendations presented in this opening brief:

- The Commission should encourage expedited procurement of resources available at net peak to a level equivalent to a 17.5 percent PRM in the summer months of 2022 and 2023;
- Existing procurement already performed by LSEs to meet future needs that will come online by 2022 or 2023 must be counted toward procurement targets adopted in this proceeding to avoid penalizing early action;
- Because accelerated procurement of up to an additional 5,000 MW by summer 2022 may not be possible -- despite LSEs' best efforts -- the Commission should not introduce new penalties on LSEs for delays to D.19-11-006 procurement outside of their control;
- Given the limited supply of resources, penalties will be inevitable for at least some LSEs. Therefore, if the Commission adopts penalties for failure to accelerate procurement, then the Commission should direct centralized procurement through the IOUs to avoid unnecessary costs for customers and market disruption;
- The Commission must clarify the modified CAM for procurement mandated in D.21-03-056 and must also do so if the Commission adopts a procurement mechanism in which the IOUs procure on behalf of all benefiting customers within this phase of the proceeding;
- The Commission should not modify RA penalties for LSEs taking reasonable actions to meet RA requirements given the significant increase in penalties only recently adopted in D.21-07-014. Instead, the Commission should maintain existing penalties and adopt a system RA waiver for LSEs who demonstrate reasonable efforts to procure;
- The Commission should establish a process for obtaining more deliverable imports in excess of RA showings by revisiting existing RA import rules and authorizing procurement of deliverable imports up to the available minimum indicated volume rights left over after RA showings;
- The Commission should make the compliance with requirements for incremental procurement tradeable among LSEs to enable more efficient and cost-effective options to meet reliability needs by all LSEs;

- The Commission should develop a more careful needs assessment to inform procurement needs and RA requirements to minimize the need for future emergency actions; and
- The Commission should not adopt an auto-enrollment program model for DR programs.

Respectfully submitted,



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