FILED
06/14/23
02:32 PM
R2110002

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

Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Reforms and Refinements, and Establish Forward Resource Adequacy Procurement Obligations.

R.21-10-002

CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S COMMENTS ON THE PROPOSED DECISION

Evelyn Kahl,
General Counsel and Director of Policy
Lauren Carr,
Senior Market Policy Analyst
Eric Little,
Director of Regulatory Affairs

CALIFORNIA COMMUNITY CHOICE
ASSOCIATION
One Concord Center
2300 Clayton Road, Suite 1150
Concord, CA 94520
Telephone: (510) 980-9459
E-mail: regulatory@cal-cca.org

June 14, 2023

TABLE OF CONTENTS

I. INTRODUCTION 1

II. FULLY REJECT THE PD'S RESTRICTIONS ON LSE EXPANSION 2

A. The PD Exceeds the Commission's Limited Jurisdiction Over CCA Implementation Plans 2

B. The PD Exceeds the Commission's Jurisdiction by Basing the "Earliest Possible Date" on a CCA's RA Compliance History 4

C. The PD Exceeds the Commission's Statutory Authority to Address Potential Cost Shifts Between CCA and IOU Bundled Customers 5

1. The PD's New Cost Shift Policy Exceeds Its Statutory Authority Under Subdivisions (d), (e), and (f) of Section 366.2 5

2. Section 366.2(a)(4) Does Not Provide Authority for the Commission's Action 6

D. The PD Applies RA Enforcement in a Discriminatory Manner 7

E. The PD is Not Based on Substantial Evidence to Support the Finding that RA Noncompliance Shifts Costs 7

F. The PD is Not Based on Substantial Evidence to Support the Finding that Allowing LSEs with Past RA Noncompliance to Expand is Detrimental to Grid Reliability 8

III. LIMIT RESOURCES COUNTED TOWARD THE EFFECTIVE PRM TO NON-RA RESOURCES TO AVOID CANNIBALIZING THE RA STACK 9

IV. SET THE EFFECTIVE PRM TARGET CONSISTENT WITH THE RESULTS OF ED'S PLANNING STUDIES 11

V. MODIFY THE CURRENT RA IMPORT BIDDING REQUIREMENTS 12

VI. MODIFY NON-SPECIFIC RA IMPORT IDENTIFICATION REQUIREMENTS 13

VII. MODIFY THE CPE PROCESS TIMELINE TO PROVIDE CERTAINTY TO LSES 13

VIII. REJECT THE PD'S PROPOSAL TO LOCK IN LSE LOAD FORECASTS ANNUALLY 14

IX. MODIFY THE RA DEFICIENCY PENALTY CLARIFICATIONS 15

X. CONCLUSION 15

ATTACHMENT A

TABLE OF AUTHORITIES

California Public Utilities Code

§ 1757(a)(4) 8
§ 366.2(a)(4) .... i, 6
§ 366.2(c)(7) 5
§ 366.2(c)(12) 3
§ 366.2(d), (e), (f) 4, 5, 6
§ 380(e) 7
§ 380 .... 2, 7

California Public Utilities Commission Decisions

D.05-12-041 .... 3, 4
D.12-09-021 3
D.19-11-002 9
D.20-06-028 .... 12, 1
D.21-06-029 15
D.21-12-015 .... 9, 10, 11, 2
Decision Adopting Local Capacity Obligations For 2024 - 2026, Flexible Capacity Obligations For 2024, and Program Refinements 1

California Public Utilities Commission Proceedings

A.10-05-015 3
R.17-06-026 5
R.17-09-020 12
R.20-11-003 .... 10, 11
R.19-11-009 15

California Public Utilities Commission Rules of Practice and Procedure

Rule 14.3 1

Caselaw

Select Base Materials v. Board of Equalization (1959) 51 Cal.2d 640, 645 7
Moyer v. Workmen's Comp. Appeals Bd. (1973) 10 Cal.3d 222, 230-31 7
Select Base Material, 51 Cal. 2d at 645 7
Los Angeles County Dept. of Children & Family Services v. Superior Court (2013) 222 Cal.App.4th 149 8
The Utility Reform Network v. Public Utilities Commission, (2014) 223 Cal.App.4th 945, 959 8

Statutes

Assembly Bill (AB) 117 2

ATTACHMENT A

SUMMARY OF RECOMMENDATIONS

- Fully reject the PD’s restrictions on load-serving entity (LSE) expansion;
- Limit the investor-owned utilities’ (IOU) effective Planning Reserve Margin (PRM) procurement to non-Resource Adequacy (RA) resources;
- Set the effective PRM target consistent with the results of Energy Division’s (ED) planning studies;
- Modify unspecified import bidding requirements to unlock additional supply;
- Make RA import identification requirements less restrictive by requiring scheduling coordinator (SC) identification in RA showings rather than LSE identification in CAISO resource identifications (ID);
- Modify the central procurement entity (CPE) process timeline to provide certainty to LSEs;
- Reject the PD’s proposal to lock in LSE load forecasts annually to avoid cost shifts; and
- Modify the RA deficiency penalty clarifications.

The California Community Choice Association (CalCCA)[1] submits these comments pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure on the proposed *Decision Adopting Local Capacity Obligations For 2024 - 2026, Flexible Capacity Obligations For 2024, and Program Refinements*[2] (PD), dated May 25, 2023.

I. INTRODUCTION

RA supply available within the California Independent System Operator (CAISO) balancing authority area (BAA) for 2023 appears inadequate to meet RA program compliance requirements and likely will continue to be tight through at least 2026.[3] Although the PD recognizes uncertainty around RA supply sufficiency, it proposes several policies that neither account for these conditions nor adequately address the underlying constraints. Until new resource development planned in the Integrated Resource Planning (IRP) comes online, the PD will perpetuate the shortfall and dysfunction in the RA program, making it difficult or impossible for all LSEs to comply and driving exorbitant RA prices.

The PD misses the mark in other respects. First, the PD extends beyond the Commission's statutory authority, without any incremental benefit to reliability, in making CCA expansion contingent upon potentially unmeetable compliance obligations. Second, increasing the "effective" PRM above the loss of load expectation (LOLE) study and extending the use of RA-eligible resources to meet the "effective" PRM would further exacerbate the RA supply insufficiency. Third, by failing to revise the RA import bid price requirement and ceiling, the PD forgoes the opportunity to unlock additional available RA capacity. Fourth, the PD declines to make modifications to the CPE procurement timeline, leaving LSEs with uncertainty as they near compliance dates. Finally, the PD introduces the opportunity for cost-shifts by proposing to ignore mid-year load migration in RA load forecasts.

With current RA market dynamics in mind, the Commission must modify the PD as follows:

- Fully reject the PD's restrictions on LSE expansion;
- Limit the IOUs' effective PRM procurement to non-RA resources;
- Set the effective PRM target consistent with the results of ED's planning studies;

[1] California Community Choice Association's members are identified here: https://cal-cca.org/about/members/.

[2] Proposed *Decision Adopting Local Capacity Obligations For 2024 - 2026, Flexible Capacity Obligations For 2024, and Program Refinements*, Rulemaking (R.) 21-10-002.

[3] See CalCCA Stack Analysis demonstrating RA shortfalls through 2025 and a 192 MW margin of excess in 2026: *California Community Choice Association's Comments on the Proposed Decision on Phase 2 of the Resource Adequacy Reform Track*, R.21-10-002 (Mar. 23, 2023), at Section II.

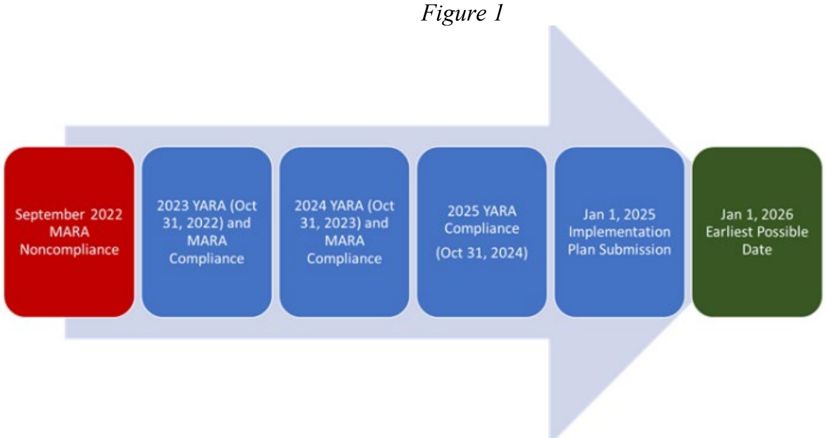
- Modify unspecified import bidding requirements to unlock additional supply;
- Make RA import identification requirements less restrictive by requiring SC identification in RA showings rather than LSE identification in CAISO resource IDs;
- Modify the CPE process timeline to provide certainty to LSEs;
- Reject the PD's proposal to lock in LSE load forecasts annually to avoid cost shifts; and
- Modify the RA deficiency penalty clarifications.

These changes will (1) ensure the Commission follows the limited statutory authority it has over CCA Implementation Plans and cost shifts, and (2) stabilize the RA market and enhance the availability of already operational RA to Commission-jurisdictional LSEs.

II. FULLY REJECT THE PD'S RESTRICTIONS ON LSE EXPANSION

The PD would require a CCA to be in RA compliance for two calendar years prior to submitting an implementation plan to expand. Figure 1 demonstrates that these requirements have the potential to create a 4-year delay from when an RA deficiency occurs and when the CCA could begin serving customers when an LSE has a deficiency just prior to a year-ahead showing.

Figure 1


September 2022 MARA Noncompliance
2023 YARA (Oct 31, 2022) and MARA Compliance
2024 YARA (Oct 31, 2023) and MARA Compliance
2025 YARA Compliance (Oct 31, 2024)
Jan 1, 2025 Implementation Plan Submission
Jan 1, 2026 Earliest Possible Date

The PD contends that these requirements prevent cost shifting and maintain reliability. As described further in the sections below, the PD fails to provide any evidence that RA noncompliance creates a cost shift in the first place or that placing restrictions on expansion will enhance reliability in any way. The PD is also fraught with legal errors that make the requirements inconsistent with statute. The Commission must revise the PD to reject the LSE expansion requirements in their entirety.

A. The PD Exceeds the Commission's Limited Jurisdiction Over CCA Implementation Plans

The PD's restriction on LSE expansion exceeds the Commission's statutory authority over CCA Implementation Plans. The Commission has concluded that Assembly Bill (AB) 117 does not confer authority for "general regulatory oversight of CCAs."[4] And clarified that "we do not believe that AB 117 intended to give this Commission broad jurisdiction over CCAs."[5] It further has concluded: "AB 117 does not provide us with authority to approve or reject a CCA's implementation plan or to decertify a CCA."[6] Importantly, the Commission assumed "if the Legislature intended for us to regulate the CCA's implementation plan in other ways, the Legislature would have included explicit language in the statute with regard to its intent."[7]

The Commission does not have authority to delay LSE expansion based on past RA noncompliance.[8] The PD exceeds the narrow grant of jurisdiction of AB 117 by recasting the phrase "earliest possible date." Instead of interpreting its authority to approve a plan as soon as possible after the clear statutory requirements are met, the PD treats its authority to set the "earliest possible date" as a vehicle to enforce RA compliance by burdening local government with an indefinite and uncertain date on which that government may offer CCA benefits to its citizens.

The statutory limitations on the Commission's role exist for a reason, as they are necessary to support the planning and coordination between the expanding CCA and the local governments included in the expansion. The process for offering CCA service in a new jurisdiction is complex and requires local government bodies develop and adhere to a strict timeline based on the Commission's designated "earliest possible date" set pursuant to Public Utilities Code Section 366.2(c)(8).[9]

In the case of an expansion, the local governments that have formed an existing CCA work with the new local jurisdiction long before launching service. The process requires the local government joining the existing CCA to pass an ordinance authorizing its action[10] and then requires extensive, ongoing coordination between the CCA and the local government.[11] The Legislature has directed that

[4] D.05-12-041, *Decision Resolving Phase 2 Issues on Implementation of Community Choice Aggregation Program and Related Matters,* R.03-10-003 (Dec. 15, 2005), Conclusion of Law (COL) 2, at 60; *see also id.,* COL 1, at 60 and Finding of Fact (FOF) 2, at 56.

[5] *Id.* at 16; *see also* D.12-09-021, *Order Denying Rehearing of Resolution E-4250,* Application of Pacific Gas and Electric Company for Rehearing of Resolution E-4250, A.10-05-015 (Sept. 13, 2012) (the Commission acknowledges its "limited jurisdiction over CCAs" in contrast to its "general jurisdiction" over IOUs).

[6] D.05-12-041, at 4; *see also id.,* at 14 ("we find nothing in the statute that directs the Commission to approve or disapprove an implementation plan or modifications to it. Nor does the statute provide explicit authority to "decertify" a CCA or its implementation plan").

[7] *Id.* at 15.

[8] PD at 38-9.

[9] All subsequent code sections cited herein are references to the California Public Utilities Code unless otherwise specified.

[10] § 366.2(c)(12).

[11] *See, e.g.,* § 366.2(c).

new customers are provided clear notice of the change in service; amongst the information to be included in that notice perhaps the most critical is notice of the timing of the transition.[12] In addition, CCAs must work with the IOU in whose territory the CCA will provide the new service to both notify the IOU of the planned commencement of service, and to plan for the transfer of applicable accounts within a quick 30-day period after CCA notification of its service commencement.[13] Also necessary for launch or expansion of service is the procurement of electricity to serve customers. The timing of customer notice and procurement are, by necessity, based entirely on the "earliest possible date" set by the Commission and must be established well in advance of a CCAs launch or expansion of service.

The statute anticipated this extensive process in Section 366.2(c)(8). The statutory requirement that the Commission "shall designate" the earliest possible launch date gives the CCA the date certain it needs to notify customers, plan its launch or expansion, procure electricity, and provide all relevant notices to the IOU. As a result, the Commission's clear establishment of the "earliest possible date" within the confines of the statute is not only required, but necessary to provide certainty for an effective implementation or expansion.

B. The PD Exceeds the Commission's Jurisdiction by Basing the "Earliest Possible Date" on a CCA's RA Compliance History

The Commission's performance of its duty under Section 366.2(c)(8) to "establish the earliest possible date" for a CCA to launch or expand, while ministerial, is a critical element of the framework for implementation or expansion of CCA service adopted in AB 117. In establishing this date, the Commission may consider "the impact on any annual procurement plan of the electrical corporation." By, instead, basing the "earliest possible date" for the expansion on the CCAs' RA compliance history, the PD violates Section 366.2(c)(8).

The PD turns on RA compliance, not on an IOU annual procurement plan. By basing its action on factors other than the impact of an IOU's annual procurement plan, it contravenes Section 366.2(c)(8)'s limited, express authorization.[14]

[12] § 366.2(c)(15).

[13] § 366.2(c)(18)-(19).

[14] In addition, long-standing principles of statutory interpretation require that a statute that provides explicit guidance implies a limitation on any other exercise of authority. This Commission has embraced these principles in prior interpretation of Section 366.2(c). D.05-12-041 at 15.

C. The PD Exceeds the Commission's Statutory Authority to Address Potential Cost Shifts Between CCA and IOU Bundled Customers

The Commission attempts to justify its foray outside the existing implementation and RA enforcement frameworks and its failure to provide a certain "earliest possible date" for the expansions by reaching for Section 366.2. Again, these sections provide limited authority for the Commission to prohibit cost shifting between CCA customers and IOU bundled customers as a result of the implementation of a CCA program. Contrary to the Commission's suggestion otherwise, the PD's "new" type of cost shift does not fall within the Commission's express authority. Further, the Commission failed to take the steps required by Section 366.2(c)(7) regarding cost shifts in issuing its certifications that would be required to address any alleged cost shifts.

1. The PD's New Cost Shift Policy Exceeds Its Statutory Authority Under Subdivisions (d), (e), and (f) of Section 366.2

Section 366.2(c)(7) defines the scope of cost shifts the Commission is authorized to address in CCA implementation in subdivisions (d), (e), and (f). These costs currently are addressed in the Commission's PCIA proceeding, R.17-06-026. The PD goes beyond these categories and adopts a new cost shift policy based upon RA deficiencies.

Section 366.2 permits recovery of several categories of costs as defined in subdivisions (d), (e), and (f). Subdivisions (d) and (e) require recovery from CCA customers of DWR Costs stemming from the 2000-2001 energy crisis. Subdivision (f) requires recovery of the IOU's "past undercollections" for IOU purchases prior to the load departing. The statute provides no other express categories of cost recovery in the CCA implementation process.

The types of cost shift addressed by the PD go beyond the scope of this express authority. The PD finds "that LSEs that are deficient in their RA obligations result in leaning on other LSEs' procurement activities."[15] The PD asserts that "if one LSE fails to contract for resources to serve its own load, the customers of other LSEs that did accomplish such forward contracting are effectively subsidizing the deficient LSE's energy procurement, and such deficiencies may impact grid reliability."[16] These costs do not fall within the scope of subdivisions (d), (e), or (f) and, critically, the PD does not claim that otherwise.

In addition, unlike the categories of costs permitted to be recovered under Section 366.2, the Commission has already authorized recovery of these costs from CCA customers to the extent they are

[15] PD at 38.

[16] *Id.* at 37.

"attributable to" CCA customers, such as procurement for the "effective" PRM. CCA customers are already paying and will continue to pay these costs as an element of their distribution charge under the existing Cost Allocation Mechanism.

If there is a cost shift, the Commission caused it by ordering IOUs to procure an effective PRM. Had the Commission simply relied on the established backstop process, the CAISO under a Federal Energy Regulatory Commission (FERC) jurisdictional tariff would have procured the necessary resources and allocated the costs to LSE deficient in their RA obligations.[17] This method would have avoided the alleged cost shift by allowing FERC to exercise its authority to mitigate market power.

2. Section 366.2(a)(4) Does Not Provide Authority for the Commission's Action

The Commission claims authority for limiting LSE expansion based upon RA deficiencies under Section 366.2(a)(4),[18] which provides that "[t]he implementation of a community choice aggregation program shall not result in a shifting of costs between the customers of the community choice aggregator and the bundled service customers of an electrical corporation." Subsection (a)(4) relies on later subsections (d), (e), and (f), as discussed above, to provide the explicit mechanisms to prevent such cost shifting. Therefore, Section 366.2(a)(4) cannot be viewed in a vacuum as a broad grant of authority to the Commission to generally prevent cost shifting.

Fundamental rules of statutory construction require harmonization of sections within a statute.[19] Harmonizing the subsections of Section 366.2, the legislative intent is clear: subsections (d), (e), and (f) are the methodologies provided by the Legislature to prevent the cost shifting identified in subsection (a)(4) that may result from the implementation of the CCA program. In other words, subsection (a)(4) was not enacted in a vacuum and does not alone provide the Commission authority to prevent cost shifting outside of Section 366.2's parameters.

The cost shift theory adopted in the PD is inconsistent with the express language of Section 366.2(a)(4). The statute addresses cost shifting *resulting from the implementation of a CCA program*. In this case, the alleged cost shifts, to the extent cost shifts would occur at all, are not *as a result of the implementation of a CCA program*, but as a result of the CCAs' noncompliance with RA requirements years before the implementation of proposed expansions.

[17] CAISO tariff § 43A.8: https://www.caiso.com/Documents/Conformed-Tariff-as-of-May1-2023.pdf .

[18] PD at 36.

[19] *Select Base Materials v. Board of Equalization* (1959) 51 Cal.2d 640, 645 and *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230-31 (citing *Select Base Material,* 51 Cal. 2d at 645).

D. The PD Applies RA Enforcement in a Discriminatory Manner

Section 380(e) requires the Commission to apply its RA program rules in a nondiscriminatory manner. The PD argues that because the Public Utilities Code creates a variety of distinctions between different classes of LSEs, it is not discriminatory for restrictions on expansion to apply to CCAs and ESPs and not to the IOUs.[20]

IOU service territories do not expand, and they are required under their grant of a franchise to serve any new customer who requests service. As the PD notes, the IOUs currently serve as the Providers of Last Resort, serving customers whose LSE deregisters.[21] The Commission thus could not prevent an IOU who has failed to meet its RA requirements from serving new customers. Similarly, the mechanism also cannot be applied to IOUs as CPEs for their RA procurement deficiencies – a critical point since the PG&E CPE came up short for compliance year 2023. The enforcement action applied by the PD cannot, for these reasons, be applied evenly to all LSEs. For this reason, the PD violates Section 380's requirement that the Commission apply RA enforcement "in a nondiscriminatory manner."

The Commission has already treated IOU and LSE procurement differently. When PG&E as CPE came up short by over 6,000 megawatts (MW) there were no penalties, backstop allocated to PG&E, or prohibitions on serving load. Instead, PG&E was provided with significantly more time to procure. This came at the expense of other LSEs who did not know the allocation of CPE resources timely and would have to procure in competition with PG&E in a capacity constrained market. Contrary to the treatment of PG&E's shortfall, LSEs have no waiver process, a points system with increasing penalties, and an unknown open position under a rapidly rising price environment.

E. The PD is Not Based on Substantial Evidence to Support the Finding that RA Noncompliance Shifts Costs

The PD states that RA noncompliance shifts costs because "LSEs that are deficient in their RA obligations result in reliance on other LSEs' procurement activities and cost-shifting."[22] The PD presents no evidence, however, to support any of these findings, skipping critical analytical steps and lacking the substantial evidence needed to sufficiently demonstrate the impact.

[20] PD at 39.

[21] *Id.*

[22] *Id.* at FOF 6.

Decisions of the Commission must be based on “substantial evidence in light of the whole record,”[23] meaning “such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value.”[24] To reach the conclusions in the PD there should be analysis demonstrating: (1) LSE RA noncompliance – not market conditions, weather, or other factors – increases costs to the system, (2) LSE RA noncompliance causes shifts of increased costs to other LSEs, and (3) past noncompliance will result in future RA noncompliance for the expanded load and, consequently, cause future cost shifts. The PD leaps over factual review and analysis directly to findings, without record development or substantial evidence.

F. The PD is Not Based on Substantial Evidence to Support the Finding that Allowing LSEs with Past RA Noncompliance to Expand is Detrimental to Grid Reliability

The PD finds that “[a]llowing LSEs that cannot meet their existing RA obligations to expand their territory or to otherwise take on new customer load is detrimental to grid reliability.”[25] As in its finding that noncompliant LSEs present cost shifts, the PD presents no evidence to support any of this finding.

Expansion by non-compliant LSEs does not increase the supply or load. To the extent a CCA or ESP is taking on existing customers of the IOU, the expansion is a zero-sum game with respect to load. That is, a customer migrating from the IOU to a retail provider neither increases nor decreases their load. It simply means that a different entity will be responsible for the capacity and energy needs of the customers. In fact, to this very point, there are opportunities for the IOUs to sell excess positions to the expanding LSE before launch.

In addition, limiting LSE expansion does not address the lack of capacity in the RA market. Given the stack analysis referenced in section I. above, the lack of clarity in the availability of capacity in California and the WECC, and increased competition for limited capacity, limiting LSE expansion does nothing to cure reliability issues. The lack of capacity faced by jurisdictional LSEs has created a situation in which at least one, and likely several, LSEs may find themselves in non-compliance simply

[23] § 1757(a)(4); *The Utility Reform Network v. Public Utilities Commission,* (2014) 223 Cal.App.4th 945, 959 (citations omitted) (applying “familiar principles to review for substantial evidence,” including all relevant evidence in the record”).

[24] *Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 222 Cal.App.4th 149 (describing the “substantial evidence” standard under California law).

[25] PD at FOF 6.

because there is not enough capacity for every LSE to be compliant. Halting CCA and ESP expansion does not get new resources built and may be detrimental to getting new resources built.[26]

Limiting LSE expansion as proposed in the PD does nothing to target a defined reliability need. Any policy solution with the aim of enhancing reliability should include parameters that target specific conditions under which the system is stressed. It should also recognize the severity of the infraction. For example, 0.1 MW deficiency in hour 2 under the Commission's slice-of-day framework is not likely to carry the same reliability concern as a 100 MW deficiency in hour 20. Limiting LSE expansion does nothing to target specific reliability concerns and even if it did, cannot address reliability concerns when the overall system is short on capacity as discussed above.

For these reasons, the Commission should reject the finding in the PD that expansion of non-RA compliant LSEs is detrimental to grid reliability.

III. LIMIT RESOURCES COUNTED TOWARD THE EFFECTIVE PRM TO NON-RA RESOURCES TO AVOID CANNIBALIZING THE RA STACK

The PD maintains the 17 percent PRM for the 2024 and 2025 RA years "given the realities of available RA supply and persistent delays in development projects."[27] The PD also maintains the effective PRM adopted in D.21-12-015 for 2024 and 2025. Maintaining a similar target to the target adopted in D.21-12-015 results in a 4-6.5 percent effective PRM, resulting in procurement targets of 1,700-3,200 MW.

The Commission declines to adopt a higher PRM and adopts an effective PRM instead given concerns about whether the existing RA fleet can achieve PRM levels above 17 percent. The PD states:

> Adopting a higher PRM before there is certainty on installed RA resources will likely result in RA shortages that will unnecessarily inflate RA costs. **A lack of sufficient RA resources with a higher PRM may result not only in LSE deficiencies, but in increased prices for all RA capacity as demand exceeds supply, and such an outcome will be detrimental to ratepayers.**[28]

[26] Energy Division analysis of LSE progress towards D.19-11-002 found that "[e]ven though the IOUs did not meet Tranche 2 on time, LSEs were collectively able to meet Tranche 2 on time (and "catch up" on the Tranche 1 requirements) due to excess procurement by the CCAs and ESPs" at slide 24: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/d1911016andd21.pdf.

[27] PD at 24.

[28] *Id.* at 23, emphasis added.

Despite these concerns, the PD would allow effective PRM procurement to cannibalize an already insufficient RA stack by adopting resource eligibility criteria that mirror those in D.21-12-015.[29] D.21-12-015 allows both RA and non-RA eligible resources to count towards the effective PRM.

RA-eligible resources that could count towards the effective PRM under the rules adopted in the PD include:

- Incremental capacity from existing power plants through efficiency upgrades, revised power purchase agreements/tolling arrangements;
- Contracting for generation that is at-risk of retirement;
- Incremental energy storage, including utility-owned storage;
- Acceleration of CODs from a resource that is otherwise required to meet an LSE's IRP target; and
- Firm forward imported energy.[30]

Allowing RA eligible resources to count towards the effective PRM adds competing demand for RA supply. When the available supply is not sufficient to meet the PRM itself, as the Commission suspects, adding an effective PRM does not result in incremental reliability. It instead only creates additional, artificial market scarcity leading to inflated prices for all RA capacity (capacity used to meet the PRM *and* effective PRM) and exacerbates the risk of LSE deficiencies.

The Commission must modify the PD to count only non-RA resources that are truly incremental towards the effective PRM. This would include:

- Resources in the Emergency Load Reduction Program (ELRP) or other programs that *do not* qualify for RA, or;
- RA-eligible resources that were not shown in the month-ahead RA process.

For RA-eligible resources, LSEs may procure them up to 45 days in advance of the RA month, when month-ahead RA showings are due. If the IOUs were to procure RA-eligible resources prior to 45 days in advance of the RA month for the effective PRM, the effective PRM procurement could be competing with LSEs trying to fill their monthly RA obligations. Effective PRM procurement of RA-eligible resources must occur *after* LSEs complete their month-ahead RA showings to not compete with LSEs' procuring RA to meet their own PRM.

[29] *Id.* at 25.

[30] D.21-12-015, P*hase 2 Decision Directing Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company to Take Actions to Prepare for Potential Extreme Weather in The Summers of 2022 and 2023*, R.20-11-003 (Dec. 2, 2021), at 100-101.

Modifying the PD in this manner would recognize market scarcity and prevent an IOU from procuring above and beyond their own RA obligation to meet an effective PRM while another LSE remains short for RA compliance. While the PD would require IOUs to make "reasonable attempts" to sell excess capacity to other LSEs before using it for the effective PRM,[31] the Commission must recognize that IOUs in the market attempting to procure RA for an effective PRM puts upward pressure on demand, increasing market prices for all. Presumably, if the IOU does sell its excess position to other LSEs, it will do so without taking a loss, meaning increased RA costs to consumers to procure the same resources that could have been accomplished at a lower cost without the IOU's intervention. For these reasons, the Commission must modify the PD to count only resources that are incremental to the RA stack towards the effective PRM, including (1) resources in the ELRP or other programs that *do not* qualify for RA, or (2) RA-eligible resources that were not shown in the month-ahead RA process.

IV. SET THE EFFECTIVE PRM TARGET CONSISTENT WITH THE RESULTS OF ED'S PLANNING STUDIES

The PD maintains roughly the same MW targets for the effective PRM as those adopted in D.21-12-015.[32] The effective PRM targets in the PD would result in a CAISO-wide 21-23.5 percent PRM despite ED's LOLE modeling finding that an 18-20 percent PRM meets the reliability target.[33]

D.21-12-015 ordered the IOUs to procure and receive cost recovery for an additional 2,000-3,000 MW of effective PRM.[34] This procurement resulted in a 20-22.5 percent effective PRM. By maintaining a similar target range with a 17 percent PRM, the PD would result in CPUC jurisdictional load having an effective PRM of between 21-24.5 percent. This value is above the targets identified in ED's LOLE study and ED's recommendation of a PRM between 18-20 percent. This value also results in a range above the 22.5 percent maximum target identified in D.21-12-015.

The Commission should modify the PD to adjust the effective PRM target to meet an 18-20 percent range, consistent with ED's modeling. A 17 percent PRM would produce an effective PRM procurement target of 427 – 1,281 MW, or 1-3 percent.

[31] PD at 25.

[32] *Id.* at 24.

[33] *Energy Division Study for Proceeding R.21-10-002*, Loss of Load Expectation and Slice of Day Tool Analysis for 2024, R.21-10-002 (Jan.20-2023), at 27: https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M501/K409/501409211.PDF.

[34] *Phase 2 Decision Directing Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company to Take Actions to Prepare for Potential Extreme Weather in the Summers of 2022 and 2023*, R.20-11-003 (Dec. 6, 2021): https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M428/K821/428821475.PDF.

V. MODIFY THE CURRENT RA IMPORT BIDDING REQUIREMENTS

The PD declines to adopt maximum RA bid prices based upon the costs of the typical marginal resource citing "insufficient information to determine whether CalCCA's proposal would necessarily increase the volume of imports rather than merely reducing the price of imports." The PD instead indicates that the Commission will consider information that arises as to why the current RA import bidding rules warrant modification.[35]

The PD erroneously suggests that more support is needed for CalCCA's position to change the import bidding rules in D.20-06-028. Scarcity of capacity in the Western market has made it more difficult for LSEs to procure reliable import RA. CalCCA provided data from the CAISO Department of Market Monitoring (DMM) showing a downward trend in the amount of RA import bid into the CAISO market since 2020, when D.20-06-028 went into effect.[36] The CAISO has posted historical year-ahead RA showings data from 2019 through 2022 that further substantiates the adverse impact the D.20-06-028 bidding rules have had on RA availability. The year-ahead RA showings data presented in Table 1 below demonstrates that since the Commission adopted the existing RA import bidding rules in 2020,[37] year-ahead non-resource specific RA imports have steadily declined, from 4,331 MW in 2020 to 1,333 MW in 2022.

Table 1: Aggregate Import RA Showings (MW)[38]

Year	Non-Resource Specific Imports (ITIE)	Resource Specific Import (TG)	Total
2019	4,155.24	1,642.22	5,797.46
2020	4,331.41	1,586.31	5,917.72
June 2020	D.20-06-028 Bidding Rules Go into Effect		
2021	2,237.63	2,159.89	4,397.52
2022	1,333.31	2,244.56	3,577.87

Failing to modify the RA import bidding rules to reverse this trend risks exacerbating RA shortages and unnecessarily increasing RA prices, especially considering the "realities of the available RA supply" as stated by the Commission.[39]

[35] PD at 54.

[36] *California Community Choice Association's Proposals in Response to Assigned Commissioner's Amended Scoping Memo and Ruling*, R.21-10-002 (Jan.1, 2023), at 19.

[37] D.20-06-028, *Decision Adopting Resource Adequacy Import Requirements*, R.17-09-020 (June 25, 2020). These rules require non-resource specific imports to self-schedule or bid at levels between negative $150/ megawatt-hour (MWh) and $0/MWh during the availability assessment hours.

[38] http://www.caiso.com/Documents/HistoricalYearAheadResourceAdequacyAggregateData.xlsx.

[39] PD FOF 4.

The Commission should *presume* that measures that could reduce costs are supported. A recent Commission report on affordability confirms the importance of viewing policies through the lens of affordability, noting that "[i]f handled incorrectly, California's policy goals could result in rate and bill increases that would make other policy goals more difficult to achieve and could result in overall energy bills becoming unaffordable for some Californians."[40] The 2022 RA report found that average August RA prices increased 158 percent from 2017-2021.[41]

Considering these price increases and the year-ahead RA import showing data, to dismiss CalCCA's proposal because it would "merely" result in cost savings is inaccurate and contrary to customer affordability through RA program efficiency. The Commission should modify the PD to adopt maximum RA bid prices based upon the costs of the typical marginal resource.

VI. MODIFY NON-SPECIFIC RA IMPORT IDENTIFICATION REQUIREMENTS

The PD would require a CAISO ID that includes the LSE ID to allow ED to track the performance of non-resource specific import RA.[42] This requirement could further restrict the ability of LSEs to show non-resource specific imports because these imports can use one resource ID for RA serving multiple LSEs.

Just like the relationship between SC and LSE is not one-to-one, neither is the relationship between the resource ID for an RA resource and the LSE receiving the RA. The Commission should therefore revise the PD to require LSEs to identify the SCs associated with their import RA transactions in their RA showings to allow staff to verify import RA transactions. This would still enable ED to track LSEs showing import RA and SCs providing the import RA but would not be so restrictive so that SCs providing import RA must develop individual resource IDs for the RA associated with each LSE.

VII. MODIFY THE CPE PROCESS TIMELINE TO PROVIDE CERTAINTY TO LSES

The PD declines to modify the CPE framework beyond providing direction on the timing of ED's CPE report and allowing self-shown resources to be sold. It defers consideration of CalCCA's proposal to lock in CPE procurement after procurement in year two until after the ED's evaluation of the effectiveness of the CPE framework in 2024.[43] The process leaves non-CPE LSEs at a significant

[40] *Utility Costs and Affordability of the Grid of the Future: An Evaluation of Electric Costs, Rates and Equity Issues Pursuant to P.U. Code Section 913.1* (May 2021).

[41] *2021 Resource Adequacy Report* (Mar. 2023) at 28: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/resource-adequacy-homepage/2021_ra_report.pdf.

[42] PD at 55.

[43] *Id.* at 50.

disadvantage by obscuring their procurement obligations net of CPE allocations until much too late in the process.

The current CPE timeline leaves LSEs uncertain of their system and flexible RA allocations from CPEs until two months prior to the year-ahead RA compliance deadline. It is not possible for LSEs to make reasonable estimates about the amount of their allocations prior to receiving them because LSEs do not receive allocations for self-shown resources. For example, the 2023 local requirement for the PG&E area was 11,056 MW. Had the PG&E CPE procured its total requirements, LSEs could have received anywhere from 0 MW to 11,056 MW of total allocations depending on how much of the 11,056 MW were self-shown versus purchased versus deferred to the CAISO for backstop. Leaving the CPE timeline as is places substantial uncertainty on LSEs conducting their own procurement.

Modifying the PD to provide certainty of RA allocations is especially important considering the state of the RA market and the consequences in this PD for LSEs that do not meet their RA requirements. Subjecting LSEs to expansion freezes in a scarce RA market ***and*** preventing LSEs from fully assessing their position until two months prior to their compliance deadline significantly disadvantages non-CPE LSEs in their RA compliance, and in turn, their opportunities to expand timely. For these reasons, the Commission must revise the PD to lock in CPE procurement after the second year of procurement.

VIII. REJECT THE PD'S PROPOSAL TO LOCK IN LSE LOAD FORECASTS ANNUALLY

The PD adopts ED's proposal to lock in year-ahead load forecasts to use for the RA program to eliminate the administrative burden of the monthly updates. The PD observes that monthly load forecast updates generally result in small changes to RA requirements, and CCAs provide at least one-year notice prior to implementation or expansion.[44]

The PD's approach will account for IOU departing load but ignores the impacts of customers who return to bundled service from a CCA. When a customer elects to leave a CCA, a minimum of six months' notice is required for a customer to return to Bundled Portfolio Service. If at least six months' notice is not provided, the customer can return to Bundled Service on the Transitional Bundled Service (TBS) rate.[45] The CCA will therefore pay for RA costs for an entire year for customers it did not serve for an entire year even if the customer may have (1) returned and paid for the bundled cost of RA at a

[44] PD at 67.

[45] *See, e.g.,* PG&E Rule 23 at 32-33.

cost that does not include the RA for that customer, or (2) returned and paid for RA to the IOU that did not have a cost (through the TBS rate).

In either event, this shifts costs from returning customers to remaining CCA customers. The Commission must modify the PD to avoid cost shifts by retaining the monthly load forecast updates.

IX. MODIFY THE RA DEFICIENCY PENALTY CLARIFICATIONS

The PD details how penalties would be applied when an LSE goes from Tier 1 at the time of the year-ahead filing to Tier 2 to in a month-ahead filing.[46] The PD clarifies that tier change is addressed by charging the LSE the difference between the full month-ahead RA (MARA) deficiency at the Tier 2 penalty price and the Tier 1 year-ahead RA (YARA) penalty the LSE already paid for that month. However, the PD does not address the opposite scenario when an LSE goes from Tier 2 in the year-ahead filing to Tier 1 in the month-ahead filing.

As established in D.21-06-029, penalty points expire after two years.[47] It is feasible for enough points to expire between a year-ahead and month-ahead filing for an LSE to be in a lower tier at the time of the MARA filing. In this scenario, the LSE could have paid more for the YARA deficiency than it is liable for in the MARA process, producing a negative output from the penalty equation in the PD. The Commission should penalize all YARA deficiencies at the Tier 1 price and collect the remaining balance in the MARA process to avoid overpayment when LSEs move down a tier. This would create a symmetrical approach to penalty application that rewards LSEs for improving performance and moving down a tier to the same degree that it punishes LSEs for moving up a tier.

X. CONCLUSION

CalCCA requests adoption of the recommendations proposed herein and in Attachment A.

Respectfully submitted,

Evelyn Kahl

Evelyn Kahl,
General Counsel and Director of Policy
CALIFORNIA COMMUNITY CHOICE
ASSOCIATION

June 14, 2023

[46] PD at 60.

[47] D.21-06-029, *Decision Adopting Local Capacity Obligations for 2022-2024, Flexible Capacity Obligations for 2022, and Refinements to the Resource Adequacy Program*, R.19-11-009 (June 25, 2021): https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K603/389603561.PDF.

ATTACHMENT A
TO
CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S
COMMENTS ON THE PROPOSED DECISION

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

FINDINGS OF FACT

5. Extending the effective PRM through 2025 is beneficial in that it provides non-binding targets for IOUs to procure contingency resources and allows procurement of resources that provide reliability benefits. To avoid ~~without~~ unnecessarily inflating RA prices and costs to ratepayers~~,~~ and ~~without~~ reducing the pool of available RA resources, only non-RA eligible resources or resources procured after the month-ahead RA showings are eligible to meet the effective PRM.

6. ~~Allowing LSEs that cannot meet their existing RA obligations to expand their territory or to otherwise take on new customer load is detrimental to grid reliability. LSEs that are deficient in their RA obligations result in reliance on other LSEs' procurement activities and cost-shifting.~~

9. Requiring LSEs to identify the SCs associated with their import RA transactions in their RA showings ~~RA imports to have a CAISO resource ID that includes the LSE ID~~ is a less onerous approach to identifying which LSE's RA imports are not meeting the import requirements established in D.20-06-028.

11. It is necessary to clarify that any penalty points accrued by an LSE will be applicable to the LSE's month-ahead and year-ahead RA penalties. It is also necessary to clarify that if an LSE enters a higher tier during a year in which it incurs year-ahead deficiencies, the higher penalty will apply beginning with the monthly deficiency when the LSE enters the higher tier. It is necessary to clarify that the Commission will penalize all year-ahead RA deficiencies at the Tier 1 price and collect the remaining balance in the month-ahead RA process to avoid overpayment when LSEs move down a tier between year-ahead and month-ahead showings.

~~15. The monthly load forecast update process requires significant Commission Staff resources, while generally resulting in only small modifications to the RA requirements. Any larger changes in load~~

~~migration will be accounted for because CCAs are required to provide at least a one-year notice prior to implementation or expansion.~~

CONCLUSIONS OF LAW

6. It is reasonable and prudent to maintain the effective PRM met by non-RA eligible resources or RA-eligible resources procured after month-ahead showings at a level equivalent to an 18-20 percent PRM ~~adopted in D.21-12-015 at the 2023 level~~ for the 2024 and 2025 RA years.

~~7. A requirement that LSEs that have had a system RA deficiency within the prior two years cannot expand to take on new customer load is a reasonable approach and permissible under Pub. Util. Code Section 380.~~

10. LSEs showing non-resource specific out-of-state RA imports should be required to identify the SCs associated with their import RA transactions in their RA showings ~~have a CAISO resource ID that includes an LSE ID for each LSE's share of the RA associated with the resource~~.

~~16. It is reasonable that an LSE's load forecasts should be locked in for the entirety of the RA compliance year.~~

ORDERING PARAGRAPHS

7. For the 2024 and 2025 Resource Adequacy compliance years, a 17 percent planning reserve margin (PRM) and an effective PRM procurement target ~~of 1,700-3,200 megawatts (MW) is adopted~~ of 427 – 1,281 megawatts (MW), or 1 -3 percent, is adopted. The procurement target will be divided between the three investor-owned utilities similar to the targets adopted in Decision 21-12-015: ~~170-320 MW~~ 42.7 – 128.1 MW for San Diego Gas & Electric Company, and ~~765-1,440 MW~~ 192.15 – 576.45 MW each for Pacific Gas and Electric Company and Southern California Edison Company.

8. ~~The requirements adopted in Decision (D.) 21-12-015 pertaining to the effective planning reserve margin (PRM) are applicable to the effective PRM adopted in Ordering Paragraph 7. Specifically,~~ Resources eligible to count towards the effective PRM will be (1) non-RA eligible resources or (2) RA-eligible resources procured after the month-ahead RA showings~~. and all resources that are currently eligible to be contingency resources will remain eligible to be contingency resources~~ in 2024 and 2025.

~~9. A community choice aggregator (CCA) that has had a system Resource Adequacy (RA) deficiency within the prior two calendar years must first be in RA compliance for two calendar years prior to submitting an implementation plan to expand. An electric service provider (ESP) that has had a system RA deficiency within the prior two calendar years must first be in RA compliance for two calendar years prior to signing new direct access customers. These rules are applicable to load-serving entities that are not acting as the Provider of Last Resort. This requirement will apply to initial or revised implementation plans submitted after the effective date of this decision, or to the enrollment of direct access customers signed after the effective date of this decision.~~

~~10. To implement the requirements adopted in Ordering Paragraph 9, Energy Division is authorized to review Resource Adequacy (RA) enforcement referrals and/or citations issued by the Consumer Protection and Enforcement Division, including confidential versions, for the prior two years to determine if a load-serving entity (LSE) is eligible to expand. Energy Division will review and confirm compliance with the adopted requirements ahead of the LSE's RA load forecast submissions, confirm the earliest possible effective date for the community choice aggregator (CCA) expansion by letter from the Executive Director, and inform the California Energy Commission of any adjustments to the load forecast necessary due to non-compliance. Energy Division is authorized to make this determination regardless of any pending citation appeal. An electric service provider that enrolls new direct access customers, or a CCA that submits an implementation plan to expand its territory, despite having system RA deficiencies within the prior two calendar years would violate this order.~~

15. LSEs showing a non-resource specific out-of-state Resource Adequacy (RA) resource will identify the SCs associated with their import RA transactions in their RA showings. ~~have a California Independent System Operator (CAISO) resource ID that includes the load-serving entity (LSE) ID for each LSE's share of the RA associated with the resource when the resource is scheduled or bid into CAISO's market.~~

17. Penalty points accrued by a load-serving entity (LSE) will be applied to an LSE's month-ahead and/or year-ahead Resource Adequacy (RA) penalties. If an LSE enters a higher tier during a year in which it incurs year-ahead deficiencies, the higher penalty will apply beginning with the monthly deficiency when the LSE enters the higher tier. The month in which an LSE accrues points that brings the LSE into the next tier, the higher penalty will apply to the deficient month for which the points

were accrued. The Commission will penalize all year-ahead RA deficiencies at the Tier 1 price and collect the remaining balance in the month-ahead RA process to avoid overpayment when LSEs move down a tier. The requirements adopted here are effective beginning for the July 2023 RA filing.

~~21. A load-serving entity's load forecasts will be locked in for the entirety of the Resource Adequacy compliance year.~~

New Order: The following timeline is adopted for central procurement entity (CPE) procurement, where two years prior to the compliance year equals Y-2, and replaces the timeline adopted in Ordering Paragraph 13 of Decision 22-03-034:

- April-May Y-2: The CAISO files draft and final Local Capacity Requirement (LCR) one- and five-year ahead studies. The LCR studies will include any CAISO-approved transmission upgrades from the Transmission Planning Process LCR study. Parties file comments on draft and final LCR studies.

- No Later Than Mid-May Y-2: LSEs in SCE and PG&E transmission access charge (TAC) areas make self-shown commitments of local resources to the CPE for the applicable RA years.

- No Later than June Y-2: The Commission adopts multi-year local RA requirements for the applicable compliance years as part of its June decision.

- No Later Than Early July Y-2: CPE receives total jurisdictional share of multi-year local RA requirements for the applicable compliance years.

- July Y-2:

  - For the SCE and PG&E TAC areas, LSEs receive initial RA allocations, including CAM credits from CPE-procured system and flexible capacity from the prior year and any bilateral contracts.

  - For the San Diego Gas and Electric Company (SDG&E) TAC area, LSEs receive initial RA allocations (system, flexible, local requirements) and CAM credits.

- Mid-August Y-2: CPE makes local RA showing to the Commission.

- End of August Y-2: LSEs in the SCE and PG&E TAC areas receive updated CAM credits for multi-year system/flexible capacity that was procured by the CPE as a result of the CPE's multi-year local RA showing to the Commission in Mid-August.

- September Y-2:

  - For PG&E and SCE's TAC areas, LSEs are allocated final year-ahead system and flexible RA allocations, including CAM credits from CPE-procured system and flexible RA capacity based on revised year-ahead load forecast load ratios.

  - For the SDG&E TAC area, LSEs receive final RA allocations (system, flexible, local requirements) and CAM credits.

- End of October Y-2:

  - LSEs in the SDG&E TAC make system, flexible, and three-year local RA showing.

  - LSEs in PG&E and SCE TACs make year-ahead system and flexible showings, and provide justification statements, if applicable, for local resources not self-shown or bid to the CPE.

  - The CPEs and LSEs that committed to self-show make year-ahead showing to CAISO.

- November 1, Y-2: Annual CPE Compliance Report