April 17, 2023

VIA ELECTRONIC MAIL

Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Email: EDRetailChoiceSection@cpuc.ca.gov

Re: California Community Choice Association's Comments on Draft Resolution E-5258. Effective Dates for the Expansions of Community Choice Aggregators: Central Coast Community Energy and East Bay Community Energy

Dear Energy Division,

Pursuant to Rule 14.5 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure, and the Comment Letter accompanying Draft Resolution E-5258, California Community Choice Association[1] (CalCCA) submits these comments on Draft Resolution E-5258, Effective Dates for the Expansions of Community Choice Aggregators (CCAs): Central Coast Community Energy (CCCE) and East Bay Community Energy (EBCE) (Draft Resolution).

SUMMARY

The Draft Resolution goes to destructive lengths to conceal its true aim: to punish EBCE and CCCE for past Resource Adequacy (RA) program deficiencies. The Draft Resolution:

- Unabashedly bypasses long-standing Commission processes, adopting and enforcing broad new rules outside of the related rulemaking proceedings – Rulemaking (R.) 20-10-002 and R.17-06-026 – through what is essentially a targeted enforcement action. Most glaring, the Draft Resolution prematurely adopts and enforces an Energy Division staff RA enforcement proposal pending consideration in R.20-10-002.

[1] California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Energy For Palmdale's Independent Choice, Lancaster Choice Energy, Marin Clean Energy, Orange County Power Authority, 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, Santa Barbara Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

- Encourages the Commission to exceed its limited statutory authority over CCAs by delaying indefinitely the launch of EBCE and CCCE expansions and misapplying statutory authority governing cost recovery and RA enforcement. The Draft Resolution ignores the Commission's limited scope of authority over CCA implementation plans, misapplies the Commission's authority to set the "earliest possible date" for CCA implementation under Public Utilities Code Section 366.2(c)(8), and creates by its own admission a "new and distinct" cost shift theory not specified by statute or prior regulation.

- Fails to connect the dots between the CCAs' RA deficiencies and the cost shift to bundled customers. The Commission's own decisions make clear that RA deficiencies did not drive or even influence the procurement of excess incremental resources or implementation of the Emergency Load Reduction Program (ELRP). There is no evidence examining the potential interplay, if any, between RA deficiencies and any market costs; factors such as RA supply sufficiency, resource availability, sales of investor-owned utility (IOU) excess resources, and load variations require consideration to reach the conclusion that a particular load-serving entity (LSE) is responsible for such costs.

- Fails to address the affordability, climate, and environmental impact of its proposed delay of EBCE's expansion into Stockton, a "disadvantaged community" (DAC) under the definition endorsed by the Commission's own Environmental and Social Justice Action Plan (ESJ), even though its ESJ and Enforcement Policies commit that all Commission decisions will prioritize and address such impacts on DACs.

The Draft Resolution is beyond repair and should be withdrawn.

BACKGROUND

The Draft Resolution effectively suspends indefinitely the already-certified amended implementation plans of CCCE and EBCE to expand their current service. EBCE submitted an amended implementation plan to expand service to the City of Stockton on September 22, 2022,[2] and CCCE submitted an amended implementation plan to expand service to the City of Atascadero on December 8, 2022.[3]

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[2] *EBCE Addendum No. 2 to the Community Choice Aggregation Implementation Plan and Statement of Intent to Address EBCE Expansion to the City of Stockton* (Dec. 8, 2022), located at https://res.cloudinary.com/diactiwk7/image/upload/v1670611946/EBCE_Addendum_2_CCA_Implementation_Plan_120822_e2sqja.pdf.

[3] *Addendum No. 4 to the Community Choice Aggregation Implementation Plan and Statement of Intent Addressing Central Coast Community Energy's Expansion to Include the City of Atascadero* (Sept. 22, 2022), located at https://3cenergy.org/wp-content/uploads/2022/12/Addendum-No.-4-to-the-CCCE-Community-Choice-Aggregation-Implementation-Plan-.pdf.

In letters dated March 8, 2023, the Commission certified that EBCE's and CCCE's implementation plans are complete and compliant with the requirements of Public Utilities Code Section 366.2(c).

The letters denied, however, the effective dates requested by EBCE and CCCE without setting an alternative date. The letters gave no information on why Energy Division was denying the requested effective dates, stating only that "Energy Division will provide further guidance on the matter." In response, on March 10, 2023, EBCE and CCCE requested pursuant to Public Utilities Code Section 366.2(c)(8) that the Commission confirm April 1, 2024, and January 1, 2024, respectively as the earliest possible effective dates for their expansions.

On March 27, 2023, Energy Division issued Draft Resolution E-5258 suspending implementation of EBCE's and CCCE's service expansions indefinitely. While the Draft Resolution purports to set January 1, 2025, as the earliest possible effective date for the expansions of service for both CCAs, it leaves the date "subject to modification by further Commission Order."[4] The conditional nature of the January 1, 2025, effective date leaves the implementation plans suspended indefinitely.

The Draft Resolution's suspension of the amended implementation plans is grounded in noncompliance by EBCE and CCCE with their requirements under the Commission's RA program for 2021 and 2022.[5] Suspension of an implementation plan is not a current remedy under the existing RA enforcement mechanism but has been proposed by Energy Division staff and is pending in R. 21-10-002.[6] Likely because the Commission has not yet adopted this mechanism, the Draft Resolution cloaks its aim as an exercise of its authority to prevent cost shifting from CCA customers to IOU bundled customers.[7]

COMMENTS

1. The Draft Resolution Unlawfully Creates and Enforces New Regulations

a. Draft Resolution End Runs R.21-10-002 in an Attempt to Cure Perceived Failures in the RA Program's Enforcement Mechanism

The Draft Resolution attempts to cure perceived failures of the Commission's RA program in addressing the consequences of RA non-compliance. Changes to the RA enforcement framework must instead be addressed, as the Commission addresses all such changes, in the pending RA rulemaking, R.21-10-002.

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4 Draft Resolution at 2.
5 *See id.* at 7-10.
6 *See infra,* Section 1.a.
7 *Ibid.*

The Draft Resolution expressly acknowledges that its decision to delay expansion is intended to "fully redress harms caused by a failure to meet Resource Adequacy requirements" [8] and penalize two CCAs for past RA non-compliance. In fact, the only CCA action the Commission identifies to justify the delay is non-compliance with RA requirements. The Draft Resolution drills down on "Resource Adequacy Program Violations" by the CCAs, providing a list of these violations for effect.[9] Six of the ten substantive findings made in the Draft Resolution address the CCAs' past or future compliance with RA requirements.[10] In short, RA non-compliance is the sole driver for the expansion delay.

The Commission's RA program, governed by Public Utilities Code Section 380, places requirements on all LSEs – CCAs, Electric Service Providers (ESPs), and IOUs. The RA program has a clear compliance and penalty framework.[11] The Draft Resolution describes those penalties, including administrative penalties and penalties for deficiencies.[12] An LSE that fails to meet its requirements must pay a pre-determined penalty, which increases by multiples as penalties accumulate. The current RA framework does not provide the Commission authority, however, to use expansion delay as a penalty for a CCA's failure to meet its RA requirements.

The Draft Resolution suggests, however, that its RA program enforcement scheme leaves a gap that needs to be addressed:

> … payment of a Resource Adequacy violation does not fully redress harms caused by a failure to meet Resource Adequacy program requirements, most notably the CCA's failure to timely procure the required level of capacity. Rather, penalties are intended to deter non-compliance, and payments on citations are remitted to the State general fund. The penalty amounts do not reflect the cost to other ratepayers when an entity fails to procure as required to maintain reliability, nor do they provide a mechanism to reimburse ratepayers for cost shifting that may be caused by an entity failing to meet its Resource Adequacy requirements.[13]

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8 *Id.* at 7.

9 *Id.* at 5-7.

10 *Id.*, Findings 5-10.

11 *See* D.20-06-031, *Decision Adopting Local Capacity Obligations for 2021-2023, Adopting Flexible Capacity Obligations for 2021, and Refining the Resource Adequacy Program,* R.19-11-009 (June 25, 2020), Ordering Paragraph (O¶) 20, at 96.

12 Draft Resolution at 6 (citing D.11-06-022, *Decision Adopting Local Procurement Obligations for 2012 and Further Refining the Resource Adequacy Program,* R.09-10-032 (Oct. 29, 2009), Appendix B; D.20-06-031, at O¶ 20).

13 Draft Resolution at 7.

If the RA enforcement scheme has, in fact, failed, that failure should be addressed in a rulemaking with notice to potentially affected parties and an opportunity to be heard. Righting the perceived "wrongs" of the RA program in a resolution targeted at the performance of two CCAs end runs the Commission's own rulemaking process.

There could not be clearer proof of this end run than the fact that this same RA enforcement mechanism is currently pending before the Commission but has not yet been adopted. The Energy Division Staff, who have also prepared the Draft Resolution, have proposed the following remedy in the current RA rulemaking, R.21-10-002:

> To address the potential reliability issues that arise with continued expansion of LSEs that are failing to meet their current summer RA obligations, ED staff propose that a community choice aggregator (CCA) or electric service provider (ESP) must be in good standing in meeting its RA requirements in order to take on new customers. Specifically, ED staff proposes that any CCA or ESP with a deficiency of greater than 2.5% of its system RA requirement on a month ahead RA filing during the previous two calendar years should not be able to expand and take on new any new customer load for the following year. For example, any LSE with RA requirement deficiencies in 2021 or 2022, would not be eligible to expand to serve new load in 2023 for service in 2024.[14]

If this proposal sounds familiar, it is; it is precisely what the Energy Division attempts to effectuate in the Draft Resolution. By skipping over the necessary procedural hoops in the RA proceeding and *sua sponte* applying the mechanism, the Draft Resolution skirts an on-going rulemaking process.

Ignoring this process violates the due process rights afforded to CCAs participating in the regulatory process. As recently recognized by the Commission, "an elementary and fundamental requirement of due process is notice reasonably calculated to apprise interested parties of the content and pendency of the action and afford them an opportunity to present their objections."[15] For this reason, the Commission regularly denies party requests for relief regarding an issue that

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[14] R.21-10-002, *Administrative Law Judge's Ruling on Energy Division's Phase 3 Proposals* (Jan. 20, 2023), Appendix A, Energy Division Proposals for Proceeding R.21-10-002, at 34.

[15] D.21-11-035, *Order Denying Rehearing of Resolution E-5150,* Application of California Solar & Storage Association, Solar Energy Industries Association and Vote Solar for Rehearing of Resolution E-5150, A.21-07-013 (Nov. 18, 2021), at 3; *see also People v. Western Air Lines*, 42 Cal.2d 621, 632 (1954) ("due process as to the [California Public Utilities Commission's] … action is provided by the requirement of adequate notice to a party affected and an opportunity to be heard before a valid order can be made").

is being addressed in a pending proceeding.[16] Critically, the enforcement mechanism has not been adopted by the Commission and legal challenges to such an order have not been exhausted. By skipping over the rulemaking process to unilaterally cure perceived failures in the RA enforcement process and achieve its goals of delaying CCA expansion, the Commission has denied due process and acted unlawfully.

b. The Draft Resolution Unilaterally and Unlawfully Implements a New Cost-Shift Regulation Outside of the Existing Rulemaking Process

The Draft Resolution creates a new cost-shift theory out of whole cloth to justify its new RA enforcement mechanism. It finds that "[b]ecause the Commission cannot conclude that Central Coast Community Energy and East Bay Community Energy's planned expansions will not cause further cost shifting, it would be unreasonable to confirm the proposed effective dates in 2024."[17] Camouflaging the Draft Resolution as an enforcement of the cost-shift prohibition under Public Utilities Code Section 366.2(d)-(f), however, does not eliminate the procedural flaws. The Draft Resolution does not employ a cost-shift category identified by statute or previously adopted in the cost-shift rulemaking, R.17-06-026; instead, it finds it "necessary to address a new and distinct type of cost shifting that is resulting from LSEs who fail to procure their required capacity under the Resource Adequacy program."[18] This new type of cost shift is not fully defined nor its calculation methodology determined, did not arise in any proceeding, and involves only two parties. The Draft Resolution, if adopted, would unilaterally and unlawfully establish an impactful, and material rule that affects more than thirty load-serving entities in the State without due process.

The Commission has previously defined cost-shifting and adopted regulations in formal proceedings with notice to all parties and an opportunity to be heard. The Power Charge Indifference Adjustment (PCIA), which is the most significant measure to avoid cost-shifting, was adopted after nearly two years of rulemaking.[19] Each time the Commission modifies the PCIA methodology, it provides notice and an opportunity to be heard in the PCIA Rulemaking,

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[16] *See, e.g.,* D.03-02-035, *Order Modifying Decision 02-07-032, for Purposes of Clarification, and Denying Rehearing, as Modified,* Application of Pacific Gas and Electric Company for Verification, Consolidation, and Approval of Costs and Revenues in the Transition Revenue Account, A.98-07-003 (Feb. 13, 2003) ("[b]ecause these issues are currently being considered in this pending proceeding, we need not and do not address these rehearing issues in today's order").

[17] Draft Resolution at 11.

[18] *Id.* at 9 (emphasis added).

[19] *See* D.07-01-025, *Order Adopting Modifications to the Cost Responsibility Surcharge Applicable to Community Choice Aggregators,* R.03-10-003 (Jan. 25, 2007) (adopting the PCIA for CCA customers after workshops and comments after first addressing "ratepayer indifference" issues in D.04-12-046 and addressing changes required of the PCIA adopted for direct access and departing municipal customers in D.06-07-030).

R.17-06-026.[20] While the Draft Resolution appears to have been served on the service list in that proceeding, there has been no rulemaking process to define or develop a calculation methodology for the "new and distinct type of cost shift."

Here again, the Draft Resolution denies parties due process in the adoption of a material "new and distinct" rule outside of its rulemaking process.

2. The Draft Resolution Exceeds the Commission's Limited Statutory Authority Over CCAs

The Commission has acknowledged its narrow role authorized by Assembly Bill 117 in overseeing local government's implementation and operation of a CCA. The Commission has concluded that AB 117 does not confer authority for "general regulatory oversight of CCAs."[21] The Commission further clarified: "we do not believe that AB 117 intended to give this Commission broad jurisdiction over CCAs."[22] In focusing specifically on the regulatory process for considering CCA implementation, it found that: "AB 117 does not provide us with authority to approve or reject a CCA's implementation plan or to decertify a CCA."[23] Importantly, it also concluded that its jurisdiction was limited by the express terms of the statute: "We assume that 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."[24] The Draft Resolution exceeds this narrow grant of jurisdiction by basing the "earliest possible date" on RA compliance and leaving the expansion date indefinite and uncertain.

a. The Commission Has No Authority to Base the "Earliest Possible Date" for Expansion on a CCA's Resource Adequacy Compliance History

The Commission's performance of its duty under Public Utilities Code Section 366.2(c)(8) to "establish the earliest possible date" for a CCA to launch or expand, while

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[20] R.17-06-026, *Order Instituting Rulemaking to Review, Revise, and Consider Alternatives to the Power Charge Indifference Adjustment* (July 10, 2017) (opening the PCIA proceeding, which currently remains open and through which the Commission is considering modifications to the market price benchmarks for the PCIA).

[21] 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.

[22] *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).

[23] 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").

[24] *Id.* at 15.

ministerial, is a critical element of the framework for implementation or expansion of CCA service adopted in AB 117. By failing to perform its duty as required, the Commission frustrates the CCA implementation and expansion process for not only the CCA, but for the local government who elected CCA, the ratepayers in the affected area, and the IOUs who are required to coordinate the transition.

The process for CCA implementation in a new jurisdiction is complex and requires compliance with a strict timeline based on the Commission's designated "earliest possible date." For example, in the case of an expansion, a CCA works with the new local jurisdiction long in advance of launching service. The process requires the local government joining the CCA to pass an ordinance authorizing its action,[25] and then requires extensive, ongoing coordination between the CCA and the local government.[26] It requires providing new customers clear notice of the change in service in many respects but, most critically, clear notice of the timing of the transition.[27] In addition, the process requires CCAs to work with the IOU in whose territory it 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.[28] Also necessary for launch or expansion of service is the procurement of electricity to serve customers. The timing of these prerequisites to service 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 Public Utilities Code 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. In setting an earliest possible effective date, the statute permits the Commission to "tak[e] into consideration the impact on any annual procurement plan of the electrical corporation that has been approved by the commission."[29] By instead setting the earliest possible date for the expansion on the CCAs' RA compliance history, however, the Draft Resolution fails to set the earliest possible date in the manner required by law.

Nowhere does the Draft Resolution state that its January 1, 2025, date for expansion is based on an annual procurement plan of any IOU. It explains the date is needed "to allow the Commission to take further actions to ensure expansion of these CCAs will not cause impermissible cost shifting onto IOU customers."[30] It concludes that "[g]iven the history and

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25 Public Utilities Code § 366.2(c)(12).
26 *See, e.g., id.* § 366.2(c).
27 *Id.* § 366.2(c)(15).
28 *Id.* § 366.2(c)(18)-(19).
29 *Id.,* § 366.2(c)(8).
30 Draft Resolution at 10.

pattern of Resource Adequacy deficiencies by CCCE and EBCE, we find they contributed to cost shifting onto IOU bundled customers."[31] It further explains that the Commission "has concerns regarding their ongoing ability to meet Resource Adequacy requirements."[32] The Draft Resolution turns on RA compliance, not on an IOU procurement plan. The Draft Resolution thus considers factors other than the impact of an IOU's annual procurement plan in contravention of Public Utilities Code Section 366.2(c)(8)'s limited, express authorization for the Commission to only consider those impacts.[33] The Commission therefore steps beyond its limited statutory authority.

b. The Commission Has No Authority to Reserve the Right to Later Modify the Designated "Earliest Possible Date"

Public Utilities Code Section 366.2(c)(8) provides that "[t]he commission shall designate the earliest possible effective date for implementation of a community choice aggregation program."[34] The Draft Resolution, purporting to reserve the right to change the designated date, does not stay within the bounds of the statute. The Draft Resolution states:

> The earliest effective date for Central Coast Community Energy and East Bay Community Energy's proposed expansions is January 1, 2025, unless the date is modified by further order of the Commission.[35]

The Draft Resolution also states that the date is conditioned on "further actions to ensure the expansions will not cause impermissible cost shifting."[36] However, no further process or

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31 *Id.* at 9.

32 *Ibid.*

33 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 doctrine, "*expressio unius est exclusio alterius*" (expression of the one is the exclusion of the other), remains a foundational statutory interpretation principle today. In utilizing the doctrine to interpret Public Utilities Code Section 366.2(c), the Commission stated:

> A general rule of statutory interpretation suggests that where a statute provides specific guidance – in this case on the Commission's role and authority – its silence in a related section or on related issues implies a limit on that role and authority. Here, the statute does require the CCA to file the plan here and gives the Commission authority to request information about the plan and to register the CCA. We assume that 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.

D.05-12-041, at 15 (citations omitted).

34 Public Utilities Code § 366.2(c)(8) (emphasis added).

35 Draft Resolution, O¶ 2, at 12 (emphasis added).

36 *Id.*, Finding 12, at 12.

schedule is described that would provide a date certain as required by the statute, or that would give the CCAs a secure milestone upon which to base the expansions.

By expressly requiring the designation of the "earliest possible date" under Public Utilities Code Section 366.2(c)(8), the Commission is not authorized under the statute to condition such designation on anything else.[37]

3. The Draft Resolution Fails to Demonstrate that CCA Deficiencies Caused Incremental Excess Procurement and ELRP Costs

The Draft Resolution summarily finds that the CCAs have shifted the costs of incremental excess procurement and ELRP resources to bundled customers.[38] It fails, however, to provide evidence that the cost shift in fact occurred.

The Commission directed the IOUs to procure the resources "to maintain reliability of the grid during extreme weather events."[39] Decision 21-12-015 makes clear that the net costs associated with the IOU supply side procurement "shall be passed through to all benefitting customers consistent with the existing Cost Allocation Mechanism."[40] Similarly, ELRP costs are recovered through distribution rates from all customers.[41] RA deficiencies did not drive or even influence this procurement.

The conclusion that the CCAs caused the costs in question, or even uniquely benefitted from those costs, has not been supported by evidence. The Draft Resolution does not demonstrate that "but for" the CCAs' deficiencies, the excess procurement would not have been taken, nor that the use of ELRP resources would not have been triggered. To draw that linkage requires demonstrating two key facts and ignores the potential that other LSEs may have contributed to the problem.

a. The Draft Resolution's Argument Is Missing Critical Analytical Steps

To demonstrate cost shifting requires a showing that there were sufficient resources in the RA market to ensure compliance by all LSEs in the Commission's RA program, and there were resources available for procurement. It is possible that all RA resources available for procurement were procured by LSEs and that the supply was insufficient to cover all

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37 *See supra,* note 34. The statutory interpretation principle *expressio unius est exclusio alterius,* which the Commission relied upon in interpreting § 366.2 in 2005 and in other cases as set forth above, applies equally to the conditional nature of the Draft Resolution's expansion date.

38 Draft Resolution, Findings 5 and 6, at 11.

39 D.21-12-015, O¶ 2, at 160.

40 *Id.*, O¶ 11, at 163.

41 *See* PG&E Advice Letter 6805-E (Dec. 29, 2022), Tables 1 and 2, at 4-5. Demand Response Expense Balancing Account (DREBA) balance is quantified and identified as being included in distribution revenue requirements. *Id.*

requirements. CalCCA's 2021-2022 Stack Analysis shows that the overall system was short capacity to meet requirements: [42]

	September NQC (MW)	2021	2022	2023
1	CAISO 1-in-2 Load	45,966	46,319	46,829
2	Reserve Margin (15%)	6,895	6,948	7,493
3	**Total RA Demand**	**52,861**	**53,267**	**54,322**
4	NQC List	44,843	46,923	47,304
5	Event-Based Demand Response	1,212	1,136	1,090
6	Imports	6,409	5,500	5,500
7	Thermal Plant Derate	(557)	(650)	(717)
8	Excess IOU Resources Above PRM (D.21-12-015)	-	(206)	(206)
9	Supply-Side Emergency Reliability Procure. (D.21-12-015)	-	(1,125)	(1,125)
10	Retention for Substitution	(619)	(619)	(619)
11	**Total RA Supply**	**51,289**	**50,959**	**51,227**
12	Surplus Supply (Deficit)	(1,572)	(2,308)	(3,094)
13	Expected New Resources	-	-	1,695
14	Surplus Supply (Deficit) with New	(1,572)	(2,308)	(1,399)

If that is the case, it was not the CCAs failure to meet their requirements that caused reliance on excess or extraordinary resources, but market scarcity in general.

To demonstrate cost shifting requires a showing that more resources would have operated in the market when energy was needed had the CCAs procured their full requirements. It is possible that all available resources were already selling into the market – as RA resources or economic resources – during periods of shortages. It is also possible that some or all of the problem was caused by unanticipated load surges due to weather conditions.[43] The monthly RA showing for September 2022 was 49,748 MW, which is higher than September's 2021 monthly showing of 48,623 MW.[44] But load was even higher: "With historic heat in many parts of

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[42] The Commission issued its report on 2021 RA procurement in March, 2023. *See 2021 Resource Adequacy Report* (Apr. 2023) (Report). https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/resource-adequacy-homepage/2021_ra_report.pdf The Report shows that, collectively, all 2021 system RA requirements under the Commission's RA program were met in all months. It does not, however, attempt to show the overall RA supply-demand balance in the CAISO-wide market for 2021. Moreover, it does not show the individual deficiencies and excesses that occurred to meet those requirements. To fully understand market dynamics requires a comparison of IOU excess procurement with other LSE deficiencies.

[43] Using 20 years of historic weather, Sept 2022 was a 1-in-11 weather event. Using 28 years of historic weather, Sept 2022 was a 1-in-25-year weather event. California ISO, *Summer Monthly Performance Report, Sept 2022* (Summer Performance Report), at 25. http://www.caiso.com/Documents/SummerMarketPerformanceReportforSeptember2022.pdf.

[44] *Id.* at 14.

California, electricity use on the ISO grid hit a peak of 52,061 megawatts (MW), breaking previous load records by almost 2,000 MW."[45]

Finally, even if the Draft Resolution could demonstrate a link between the CCA deficiencies and market costs, those costs must be recovered based on the Commission's determination of cost recovery at the time "the commitment to incur the cost is made," as discussed above.

b. The CCA Deficiencies May Have Been Caused, in Part, by PG&E's Failure to Sell Excess Capacity from Its Portfolio

The Commission's rush to punish these two CCAs for RA deficiencies may hold the wrong LSEs accountable. PG&E has admitted in its ERRA Compliance Application that it had 923 MW of "excess RA" it did not sell to LSEs like EBCE and CCCE during the summer months of 2022.[46] PG&E's Excess Resource Report for 2022, which is public, shows that the 923 MW were counted as excess in June – October 2022 as follows:[47]

Project/Resource Name	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22
2. Excess Resources from IOU Portfolio Above 15% PRM	*MW to be claimed for CAM Cost Recovery*				
Excess Resources from IOU Portfolio	103.70	183.14	148.97	156.70	330.00

The Commission has identified PG&E's ERRA Compliance application as the place for parties to determine if PG&E managed its portfolio prudently during 2022, including determining the amount of "excess RA" in its portfolio, the amount of that excess RA offered for sale, whether PG&E received actionable bids to purchase that excess RA during 2022, and whether PG&E's rejection of bids, if there were any, for that excess RA was appropriate.[48]

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[45] *Id.* at 35. The September 6 peak load was 17% above the CEC month-ahead forecast, meaning that September RA fell short of actual load by 2,313 MW. *Id.* at 49.

[46] A.23-02-018, *Pacific Gas and Electric Company Application for Compliance Review of Utility-Owned Generation Operations, Portfolio Balancing Account Entries, Energy Resource Recovery Account Entries, Contract Administration, Economic Dispatch of Electric Resources, Utility-Owned Generation Fuel Procurement, and Other Activities for the Period January 1 Through December 31, 2022,* Prepared Testimony (Feb. 28, 2023), Ch. 12 at 12-15.

[47] *IOU Excess Reporting Summary,* 2022, Pacific Gas and Electric Company, Row 53, Columns D-H, located at: Resource Adequacy Compliance Materials (ca.gov)

[48] *See, e.g.,* A.22-02-015, *Assigned Commissioner's Scoping Memo and Ruling,* at 2-3 (including in scope "Whether PG&E administered resource adequacy procurement and sales consistent with its Bundled Procurement Plan" and "Whether PG&E, during the record period, prudently administered and managed, in compliance with all applicable rules, regulations and Commission decisions, including but not limited to Standard of Conduct No. 4, the following: a. Utility-Owned Generation facilities; b.

CalCCA has protested PG&E's application, raising this specific issue within that protest.[49] CalCCA's reviewing representatives are in the process of investigating the causes of the capacity shortfalls in the Northern California market in the months the Commission cites in the Draft Resolution. That analysis is in its early stages because PG&E did not file its application until February 28, 2023. However, CalCCA's reviewing representatives have noted at least some oddities in PG&E's 2022 RA sales framework that warrant further investigation.

Thus, the Commission's decision to lay the blame of this deficiency at the feet of these two CCAs is, at the very least, premature since the Commission's own process to answer some of the questions underlying the Commission's conclusions have not yet been completed (and, really, have just started). CalCCA, therefore, has had no ability to access the data necessary to refute the Commission's allegation, let alone been provided any opportunity to present an evidence-based case that the Commission has erred in reaching some of the key conclusions that form the basis of the Draft Resolution. Or worse, that the investigation shows the lack of RA capacity in the market is attributable to PG&E's actions, and that the Resolution's conclusions have no foundation in fact.

4. The Draft Resolution Discriminates in the Application of Enforcement for RA Non-Compliance in Violation of Public Utilities Code Section 380(e)

Public Utilities Code Section 380(e) requires the Commission to apply its RA program rules even-handedly. Each LSE must be subject to the same RA program requirements. Similarly, "[t]he commission shall implement and enforce the resource adequacy requirements established in accordance with this section in a nondiscriminatory manner."[50] The Draft Resolution results in discriminatory enforcement of its RA program requirements.

As explained in Section 1.a., the Draft Resolution is effectively an enforcement action for CCA's RA program deficiencies. The "cure" for the RA program failures in the Draft Resolution is to intentionally delay a CCA's ability to expand. However, that cure cannot neatly be applied to IOUs or ESPs. IOU service territories do not expand, and they are required under their grant of a franchise to serve any new customer who requests service. The mechanism also cannot be applied to IOUs as central procurement entities for their RA procurement deficiencies.

The mechanism is also ill-suited as a penalty for ESPs. The Commission in 2020 recommended against the expansion of the Direct Access program at that time.[51] Consequently, the scope of existing ESP customers cannot legally be expanded. Because this enforcement

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Qualifying Facilities (QF) Contracts; and c. Non-QF Contracts. If not, what adjustments, if any, should be made to account for imprudently managed or administered resources?").

[49] A.23-02-018, *California Community Choice Association's Protest to the Application of Pacific Gas and Electric Company* (Apr. 3, 2023).

[50] Public Utilities Code § 380(e).

[51] *See generally* D.21-06-033, *Decision Recommending Against Further Direct Access Expansion*, R.19-03-009 (June 24, 2021).

action would have little or no effect for ESPs or IOUs failing to meet their RA requirements, the Draft Resolution violates Public Utilities Code Section 366.2(c)(8)'s requirement that the Commission apply RA enforcement "in a nondiscriminatory manner."

5. The Commission's Failure to Consider the Environmental and Social Justice Impacts of the Draft Resolution is Inconsistent with Its Own Recommendations and Goals

The Draft Resolution fails to consider the significant impact of the delay of CCA expansion on Environmental and Social Justice (ESJ) Communities, including those in the City of Stockton which seeks to receive expanded service from EBCE.[52] The Commission commits in the ESJ Plan to "ensur[e] the clean energy transition does not unduly increase rate burdens on lower income communities nor increase existing disparities between lower-income communities and others."[53] The Commission's Enforcement Policy, adopted in Resolution M-4846 and providing "guiding principles on enforcement approaches," also specifically requires the Commission to:

> Promote enforcement of all statutes within its jurisdictions in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority and low-income populations in the state. This includes tailoring enforcement responses to address the needs of vulnerable and disadvantaged communities.[54]

EBCE's expansion request is for the City of Stockton, which passed its ordinance for EBCE to provide CCA service within its city. Much if not all of the City of Stockton is designated as a 2022 Disadvantaged Community (DAC) under the California Environmental Protection Agency's CalEnviroScreen 4.0.[55] This designation is based on "geographic, socioeconomic, public health, and environmental hazard criteria" and is widely used by the Commission to identify ESJ communities.[56] Despite the ESJ Plan stating that the Commission will place ESJ issues, as "a priority in all actions the CPUC takes" including "implementation processes included in . . .

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[52] CPUC Environmental & Social Justice Action Plan (ESJ Plan), Version 2.0 (Apr. 7, 2022), located at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/news-office/key-issues/esj/esj-action-plan-v2jw.pdf.

[53] ESJ Plan at 4.

[54] Resolution M-4846, *Resolution Adopting Commission Enforcement* Policy (Nov. 5, 2020), Attachment at 4, located at: https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M348/K036/348036813.pdf.

[55] *See* CalEPA website, SB 535 Disadvantaged Communities, Final Designation of Disadvantaged Communities (May 2022), located at: https://oehha.ca.gov/calenviroscreen/sb535.

[56] *See* ESJ Plan at 10 ("Many of the CPUC's energy-related programs use the CalEnviroScreen tool . . . as means of focusing efforts and prioritizing investment in communities disproportionately affected by air pollution and facing socioeconomic burdens").

resolutions,"[57] the Draft Resolution entirely fails to analyze the impact of the delayed expansion on Stockton customers and does not mention the DAC designation of the community. In fact, the delayed expansion will prevent Stockton residents the choice to secure their energy from their local CCA, a choice that 11 million Californians have already exercised, enabling their communities to more closely influence the procurement strategies in pursuit of local goals.[58] If the Commission is truly committed to its ESJ Plan, it should be considering the impact of every decision on ESJ communities, including Stockton.

CONCLUSION

CalCCA appreciates the Commission's thoughtful and careful consideration of these comments.

Respectfully,

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57 ESJ Plan at 23.

58 *See* Stocktonia, "City Council Votes to Say Goodbye to PG&E as Stockton's Main Power Source" (Sept. 23, 2022) (describing the City of Stockton City Council's unanimous adoption of a resolution to join a CCA, and quoting the City's general manager as stating that the move from PG&E to a CCA will result in rate reductions, environmental benefits, and more local control over the city's energy).