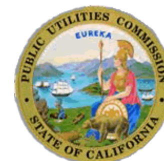

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement Senate Bill 520 and Address Other Matters Related to Provider of Last Resort.	R.21-03-011

CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S REPLY COMMENTS ON THE RULING OF THE ASSIGNED ADMINISTRATIVE LAW JUDGE ENTERING STAFF PROPOSAL INTO THE RECORD AND NOTICING PUBLIC WORKSHOPS

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SUMMARY OF RECOMMENDATIONS

FSR Calculation

- The California Public Utilities Commission (Commission) must not ignore the hedge value of Power Charge Indifference Adjustment (PCIA) and Cost Allocation Mechanism (CAM) Energy in the financial security requirement (FSR) calculation;
- The Commission should defer consideration of Pacific Gas and Electric Company's (PG&E) two months of energy proposal to Phase 2;
- The Commission should not adopt seasonal Resource Adequacy (RA) costs if it adopts seasonal rates because, unlike seasonal rates, there is no readily available seasonal RA cost measurement;
- The FSR should be reduced for the RA capacity of CAM, Demand Response (DR), and Central Procurement Entity (CPE) allocations because they automatically return to the Provider of Last Resort (POLR) as RA requirements transfer from the deregistering Load Serving Entity (LSE) to the POLR;

FSR Affordability

- The Commission must discount the FSR to account for the probability that customer return will occur;
- PG&E incorrectly states there were no capacity insufficiencies during previous customer returns to the POLR;

Financial Monitoring

- The Commission should not require continual financial reporting from community choice aggregators (CCA) that have not triggered financial monitoring;
- As long as the POLR is also a market participant, the Commission must not provide the POLR with confidential information about LSEs who trigger financial monitoring;
- The Commission should not require CCAs to provide non-confidential financial information to the POLR upon request, as this information is already publicly available for the POLR to access;
- The Commission should not require meetings similar to the Procurement Review Group (PRG) as part of CCA financial monitoring;
- The Commission should not adopt any triggers that are undefined or that introduce subjectivity;

Summary of Recommendations continued

- The Commission should adopt Staff's Proposal for Financial Monitoring Triggers, as Parties' proposed recommendations to the triggers are excessive, or lead to unintended consequences;

Contract Assignment

- The Commission should reject The Public Advocates Office at the California Public Utilities Commission's Right of First Refusal proposal and the Solar Energy Industries Association and Large-Scale Solar Association's required contract novation proposal and alternative proposal; and

- Energy Division should clarify the process for implementing a discount to the FSR/Re-entry Fee based upon the assignment of an RA Contract.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement Senate Bill 520 and Address Other Matters Related to Provider of Last Resort.	R.21-03-011

CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S REPLY COMMENTS ON THE RULING OF THE ASSIGNED ADMINISTRATIVE LAW JUDGE ENTERING STAFF PROPOSAL INTO THE RECORD AND NOTICING PUBLIC WORKSHOPS

The California Community Choice Association[1] (CalCCA) submits these Reply Comments in response to the *Ruling of the Assigned Administrative Law Judge Entering Staff Proposal Into the Record and Noticing Public Workshop*,[2] *E-Mail Ruling Granting Request to Reschedule Workshop and Extend the Deadline For Filing Comments*,[3] and *E-Mail Ruling Granting Request to Reschedule Workshop and Extend the Deadline For Filing Comments*.[4]

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[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.

[2] *Ruling of the Assigned Administrative Law Judge Entering Staff Proposal Into the Record and Noticing Public Workshops,* Rulemaking (R.) 21-03-011 (Jan. 6, 3023) (Ruling): https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M500/K761/500761891.PDF.

[3] *E-Mail Ruling Granting Request to Reschedule Workshop and Extend the Deadline For Filing Comments*, R.21-03-011 (Feb. 27, 2023): https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M502/K757/502757266.PDF.

[4] *E-Mail Ruling Granting Request to Reschedule Workshop and Extend the Deadline For Filing Comments*, R.21-03-011 (Mar. 17, 2023): https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M503/K824/503824337.PDF.

I. INTRODUCTION

In these reply comments, CalCCA responds to parties' opening comments on the financial security requirement (FSR) proposals presented through the calculators at the April 4, 2023 workshop, and parties' opening comments on the *Energy Division Staff Analysis and Proposal for Phase 1 Issues in the Provider of Last Resort Proceeding*[5] (Staff Proposal). CalCCA continues to support updates to the FSR calculation that better reflect the likelihood of customer return and the actual costs and revenues the Provider of Last Resort (POLR) can expect to receive upon customer return. CalCCA also supports many of the elements in the Staff Proposal with the modifications described in CalCCA's opening comments.[6] CalCCA's reply comments conclude as follows:

FSR Calculation

- The California Public Utilities Commission (Commission) must not ignore the hedge value of Power Charge Indifference Adjustment (PCIA) and Cost Allocation Mechanism (CAM) energy in the FSR calculation;
- The Commission should defer consideration of Pacific Gas and Electric Company's (PG&E) two months of energy proposal to Phase 2;
- The Commission should not adopt seasonal Resource Adequacy (RA) costs if it adopts seasonal rates because, unlike seasonal rates, there is no readily available seasonal RA cost measurement;
- The FSR should be reduced for the RA capacity of CAM, Demand Response (DR), and Central Procurement Entity (CPE) allocations because they automatically return to the POLR as RA requirements transfer from the deregistering Load Serving Entity (LSE) to the POLR;

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[5] *Energy Division Staff Analysis and Proposal for Phase 1 Issues in the Provider of Last Resort Proceeding*, Rulemaking (R.) 21-03-011 (Jan. 6, 2023): https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M500/K762/500762116.PDF.

[6] All references to party Opening Comments are to the comments filed in this Docket (R.21-03-011) on April 18, 2023 in response to the Ruling.

FSR Affordability

- The Commission must discount the FSR to account for the probability that customer return will occur;

- PG&E incorrectly states there were no capacity insufficiencies during previous customer returns to the POLR;

Financial Monitoring

- The Commission should not require continual financial reporting from community choice aggregators (CCA) that have not triggered financial monitoring;

- As long as the POLR is also a market participant, the Commission must not provide the POLR with confidential information about LSEs who trigger financial monitoring;

- The Commission should not require CCAs to provide non-confidential financial information to the POLR upon request, as this information is already publicly available for the POLR to access;

- The Commission should not require meetings similar to the Procurement Review Group (PRG) as part of CCA financial monitoring;

- The Commission should not adopt any triggers that are undefined or that introduce subjectivity;

- The Commission should adopt Staff's Proposal for Financial Monitoring Triggers, as Parties proposed recommendations to the triggers are excessive, or lead to unintended consequences;

Contract Assignment

- The Commission should reject The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) Right of First Refusal (ROFR) proposal and the Solar Energy Industries Association and Large-Scale Solar Association's (SEIA/LSA) required contract novation proposal and alternative proposal; and

- Energy Division should clarify the process for implementing a discount to the FSR/Re-entry Fee based upon the assignment of an RA Contract.

In opening comments, many parties reiterate positions taken in previous comments that CalCCA has already responded to in previous reply comments. Where applicable, these comments cite previous comments that reflect CalCCA's positions on these topics.

II. FSR CALCULATION

A. The Commission Must Not Ignore the Hedge Value of CAM and PCIA Energy in the FSR Calculation

While Cal Advocates, PG&E, Southern California Edison Company (SCE), and San Diego Gas & Electric (SDG&E) oppose the notion of reducing the FSR by the amount of energy from CAM and PCIA that is hedging load, none argue that it is not actually hedging consumer costs. SCE argues that CAM energy is billed and collected through distribution rates and the FSR is for Energy Resource Recovery Account (ERRA) related costs.[7] While the distinction may be true, it fails to recognize that like the amount of capacity already purchased by the customer and allocated to their CCA via CAM, the same is effectively true for the energy value and accordingly, should accrue to the CCA and its customers to address FSR needs.

In addition, SCE argues that the returning customers do not pay twice for the hedge value of the PCIA.[8] Without further discussion of the detailed accounting framework used to account for the PCIA over and under collections, CalCCA cannot conclude that SCE is correct in this assertion. Returning customers, in the case that the tariffed rate does not cover current market costs, risk paying more than bundled customers will pay under the current formulation:

Bundled Customer	Returning Customer
Tariffed Rate	Tariffed Rate
N/A	Incremental market value through Reentry Fee
ERRA shortfall amortization to recover incremental market value	ERRA shortfall amortization to recover incremental market value

At the very least, it is clear that the timing of the mechanism is ill suited for the return of customers in that the re-entry fee could calculate a large amount to be funded by the CCA or its

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7 SCE Opening Comments at 16-17.

8 *Id*. at 18-20.

customers while at the same time, an over-collection in ERRA accrues. If the concern for customer costs is a part of this proceeding, then the re-entry fee process should account for these offsetting effects so that in the instant, customers are not hit with high bills only to be followed later by a reduction when the PCIA values are accounted for. It is the very offset that supports the conclusion that the PCIA and CAM energy are both hedges against customer costs for which the FSR and re-entry fee should account.

Finally, SCE states that they do "not contract for hedges for off-peak hours, so again, the [CalCCA] proposal would overvalue the hedges."[9] To CalCCA's knowledge, the PCIA and CAM fleet both contain resources capable of producing energy in both peak and off-peak periods. The question is not whether SCE "contracts" for hedges during off-peak hours; the ownership of the fleet creates a natural physical hedge without contracting. If the energy amounts provided by SCE in response to the CalCCA data request do not provide energy in the off-peak periods, then the CalCCA calculator actually under-values the hedges in that the off-peak forward energy prices are lower than the on-peak forward prices. That aside, since the resources available to SCE in the CAM and PCIA produce energy in both on and off-peak periods, the hedge value is not overstated nor does CalCCA suggest that a true forecast of the energy values should be over or understated for purposes of the FSR calculation. Rather a forecast of output from the resources using the same Intercontinental Exchange (ICE) - forward energy prices should be used to determine when the resources are "in the money".

B. The Commission Should Defer Consideration of PG&E's Two Months of Energy Costs Proposal to Phase 2

PG&E's comments state that while it is "well positioned to reliably serve its bundled service customers and meet state policy goals," it continues to propose an FSR and re-entry fee

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9 *Id.* at 15.

framework that covers at least 60 days of incremental procurement costs. Its justification for this proposal is that "the financial strength of PG&E should not be hampered by having to bear the incremental costs as the POLR and reserving financial liquidity and using up its own credit capacity to service million of CCAs' customers on an emergency basis. [10] The Commission should reject PG&Es proposal to base the FSR on two months of procurement costs and instead focus on modifications to the individual components of the FSR calculation to make them more accurate.

While PG&E claims to be "well positioned to reliably serve its bundled service customers," it then goes on to state concerns over serving in the role of POLR unless it can get two months of the California Independent System Operator Corporation (CAISO) energy costs not offset by any customer revenues. Interestingly, neither SCE nor SDG&E seem to share the same concern, or at least do not make the same demand. In particular, SDG&E faces a significant amount of CCA load from a single CCA. PG&E, on the other hand, faces a significant amount of load being served by CCAs but the number of CCAs is significantly higher than that of SDG&E. This would imply that PG&E is concerned with a "black swan" event of a large number of CCAs in its area simultaneously returning load in an unplanned manner.

If PG&E and the Commission see this potential as so significant that it will place the health of the investor-owned utility (IOU) at risk, then the Commission should move expeditiously to the second phase of this proceeding. The second phase must then focus on identifying a non-IOU entity whose financial capability is not threatened in the manner that PG&E is concerned.

Absent that assessment, the Commission should continue with its plans to focus on modifications to the individual components of the FSR calculation to make them more accurate in

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[10] PG&E Opening Comments at 1-2.

this phase. It can then evaluate the need for an insurance pool to address PG&E's concern in the second phase of this proceeding and evaluate whether another entity should serve as the POLR.

C. The Commission Should Not Adopt Seasonal RA Costs if it Adopts Seasonal Rates Because, Unlike Seasonal Rates, There is no Readily Available Seasonal RA Cost Measurement

Conceptually, costs and rates that vary by time should be accounted for with such variation. Under the present FSR calculation, the cost of energy from the CAISO market is differentiated in that the IOUs use a forward price forecast of energy for the months the FSR is to cover. The monthly costs of RA are much less clear since there is no centralized capacity market and no monthly forward curve for RA. Instead, the Commission develops a benchmark based upon historical contracts. The contracts reported to produce this benchmark are a mix of contracts covering anything from one month to multiple years. The data simply do not provide sufficient granularity to determine a seasonal differential.

In its comments, SCE states, "[i]f the FSR and Re-Entry Fee calculations move away from an annual average generation rate to seasonal average generation rates to forecast the POLR's revenues available to pay the cost of new generation, the cost of new procurement needs to fairly account for seasonality as well."[11] CalCCA disagrees. Directionally, greater granularity in reflecting costs and revenues, where possible, improves the accuracy of the FSR posting. Moreover, SCE does not recognize that the current calculation already has a mismatch between non-seasonal retail rates and seasonal energy cost forecasts which are a far larger impact than the inclusion of seasonality in the RA cost forecast. Using the current FSR calculation as provided by the IOUs in their calculator, of the total forecasted costs of new procurement, approximately 85 percent in the summer comes from the energy cost forecast. With 85 percent of the cost

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[11] SCE Opening Comments at 12.

forecast being differentiated by season using forward ICE quotes, it is unreasonable to ignore the offsetting revenues which are also differentiated by season in the IOUs rates. SCE suggests that the tail should wag the dog. Failing to seasonally differentiate revenues because matching RA costs are not available would allow the RA cost, representing approximately 10 percent of the summer costs, to drive greater misalignment of 100 percent of the revenues.

Within this proceeding, parties have not proposed a seasonal RA benchmark with supporting evidence of its accuracy. Without sufficient opportunity to examine such data and present evidence to the contrary, the Commission cannot adopt a seasonal value for RA. While the annual RA report provides monthly values for the average and weighted average prices of RA, in the POLR proceeding, there has been a general consensus that the RA report information is too old to be of use in setting the cost of RA. Parties instead appear to be supportive of using the PCIA benchmark to establish the cost of RA. However, the PCIA benchmark reflects an annual RA price and does not provide monthly or seasonal information. In addition, with many contracts procured at a single strip price covering both summer and winter periods or for multi-year periods, the data do not provide confidence that they reasonably represent a seasonal RA price.

The Commission should reflect seasonal values where such information is readily available and reasonably accurate, such as in the cost of energy and the retail rate revenues and should not do so where those values are not supported by evidence sufficient to provide a reasonably accurate value.

D. The FSR Should be Reduced For the RA Capacity of CAM, DR, and CPE Allocations Because They Will Automatically Return to the POLR as RA Requirements Transfer from the Deregistering LSE to the POLR

SCE and SDG&E indicate they support reducing the RA cost component by CAM, DR, and CPE credits only if the credits are immediately reallocated to the IOU POLR.[12] As CalCCA

[12] SCE Opening Comments at 2, 12-13, and SDG&E Opening Comments at 19-20.

explained in its August 5, 2022 reply comments to SDG&E, there is no reason these credits would not be immediately transferred from the deregistering LSE to the IOU once the IOU takes on the RA obligations associated with the returning customers.[13]

The IOU procures CAM, DR, and CPE resources on behalf of all customers - bundled and unbundled. LSEs receive "RA credits" through a reduction in their RA requirements for their portion of CAM, DR, and CPE resources procured on their behalf by the IOU. If a CCA returns its customers to the IOU, the Commission and the IOU will already know how many RA credits were allocated to the returning customers and thus how much is reverting to the IOU to serve the returned customers. In practice, the Energy Division accomplishes this by transferring the RA requirement associated with the CAM, DR, and CPE resources from the CCA to the IOU. The IOU then has the resource in its portfolio to use to serve the transferred RA requirement. By definition, the IOU will immediately have the resources since the RA requirement associated with CAM, DR, and CPE resources already resides with the IOU as do the resources. There is no potential that the IOU will not immediately have the RA resources to use to satisfy the returning customers' obligations in this case.

If a CCA deregisters, the RA credit associated with IOU procurement performed on the CCA's behalf will not disappear. Instead, these credits will follow the returning customers from the CCA to the IOU. While this appears to be the status quo, if doubt remains the Commission should simply clarify in its final decision. Therefore, the Commission should modify the FSR calculation to reduce the amount of forecasted RA procurement the POLR will need to perform on behalf of returned customers.

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[13] *California Community Choice Association's Reply Comments on Ruling of the Assigned Commissioner and Assigned Administrative Law Judge Requesting Comments on Financial Security Requirements and Reentry Fees, and Modifying The Proceeding Schedule*, R.21-03-011 (Aug. 5, 2022), at 4-5: https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M496/K416/496416748.PDF.

III. FSR AFFORDABILITY

A. The Commission Must Discount the FSR to Account for the Probability That Customer Return Will Occur

Cal Advocates and the IOUs do not support the Staff Proposal to provide a ramping period to increase the FSR posting amount to its required level over time; nor do they support reducing a CCA's FSR if the CCAs can demonstrate adequate hedging contracts, demonstrate compliance with RA and Integrated Resource Plan (IRP) obligations, and are not considered to be at financial risk.[14] These parties cite concerns around potential cost shifts to customers and uncertainty around the effectiveness of the criteria in mitigating the risk of deregistration. For the reasons described below, the Commission should reject the arguments made by Cal Advocates and the IOUs, and adopt the Staff Proposal with the modifications proposed by CalCCA.

As CalCCA explained in its July 5, 2022 comments on the FSR calculation,[15] it is universally accepted in energy markets that collateral requirements should be considered in light of risk factors. Cal Advocates and the IOUs ignore this principle in their arguments. Keeping the calculation as is without a risk adjustment, as these parties suggest, would set the FSR to cover 100 percent of the incremental procurement costs minus the expected revenues of the returning customers. This results in a CCA securitizing the full expected costs of a customer return in advance, even if the probability of that return is slim.

Modifying the FSR calculation without considering the likelihood of customer return, as Cal Advocates and the IOUs recommend, will result in imbalanced and unnecessarily costly FSR postings. The Commission must strike the right balance between protecting bundled customers

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[14] Cal Advocates Opening Comments at 23, PG&E Opening Comments at 17-18, SCE Opening Comments at 27-29, and SDG&E Opening Comments at 13-15.

[15] *California Community Choice Association's Comments on Ruling of the Assigned Commissioner and Assigned Administrative Law Judge Requesting Comments on Financial Security Requirements and Reentry Fees, And Modifying the Proceeding Schedule*, R.21-03-011 (July 5, 2022), at 19-21.

and setting the FSR so high that it unreasonably reduces a CCA's liquidity or credit capacity, undermining stable operations at the expense of the CCA and its customers. To this end, the Commission must consider modifications to the FSR calculation that address both the risks associated with customer return and the likelihood of customer return occurring.

When determining the likelihood of customer return, the Commission must evaluate CCAs based on attainable standards that consider market conditions at the time. The Staff Proposal makes positive steps towards accounting for risk by discounting the FSR if a CCA can demonstrate metrics that point to a low probability of failure. Under the Staff Proposal, if a CCA receives an FSR discount, the Commission has determined that the CCA's risk of involuntary customer return is low, and therefore the risks of customers having to pay re-entry fees are also low.

SCE states that if the Commission adopts a discount to the FSR, the Commission should "notify potential CCA customers well in advance of their automatic enrollment in a CCA program of the attendant risks, including the results of any risk assessment by the Commission, and on a regular basis during the pendency of any FSR discounting."[16] The Commission should reject SCE's recommendation. Customers served by an IOU take on risk associated with the IOU's service. The IOUs and the Commission regularly make decisions that will affect bundled customers' risk profiles, and the IOUs have no requirement to report those decisions and associated risks to their customers in a manner similar to what SCE proposes.

Notifying customers of risks associated with an FSR discount is unnecessary. If the Commission offers an FSR discount to a CCA under the Staff Proposal, the Commission has determined that the CCA's risk of involuntary customer return is low. The Commission should reject SCE's proposal to notify CCA customers of risks associated with an FSR discount.

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[16] SCE Opening Comments at 29.

B. PG&E Incorrectly States There Were No Capacity Insufficiencies During Previous Customer Returns to the POLR

PG&E states "…the most recent deregistration or withdrawal of the following CCAs happened outside of capacity market constraints: Butte Clean Energy (June/July 2020), Western Community Energy (June 2021), and the City of Baldwin [*sic*] (October 2021)."[17] The Commission should ignore PG&E's claims that there were no capacity market constraints in 2020, 2021, and 2021 when evaluating the conditions for qualifying for an FSR adjustment to account for the probability of customer return.

PG&E's assertions that the recent CCA deregistrations "happened outside of capacity market constraints" are factually incorrect. While market participants may disagree about the degree of constraint, there is scant, if any, evidence to support PG&E's conclusion. The 2021 Resource Adequacy Report states:

> The weighted average price of system RA for both seasons has increased each year, and at an accelerating pace. Average August prices were $3.13/kW-month in 2017 but increased each year thereafter. By 2021 the average price had risen to $8.07 kW/month, an increase of 158 percent over just 5 years. January RA prices increased a more modest 112 percent between 2017 and 2021, from $2.52/kW-month to $5.35/kW-month. <u>These price increases appear to be driven by issues related to supply and demand balances due to resource retirements, load forecast increases, and changes in counting conventions for certain resources.</u>[18]

CalCCA's stack analysis in Table 1 compares total RA supply to RA requirements from 2021-2023 and indicates supply deficits each of those years.[19]

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[17] PG&E Opening Comments at 4 (footnote omitted).

[18] 2021 Resource Adequacy Report at 28 (emphasis added): https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/resource-adequacy-homepage/2021_ra_report.pdf.

[19] See Appendix A for data sources.

Table 1: 2021-2023 Stack Analysis

	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 Resources	(1,572)	(2,308)	(1,399)

In opening comments, CalCCA also demonstrated that capacity market constraints are expected to persist through at least 2026.[20] The Commission should ignore PG&E's erroneous claims that there were no capacity market constraints in 2020 and 2021.

Setting the criteria for an FSR discount based upon compliance with the RA program will mean that some LSEs would be ineligible for a discount regardless of their efforts to comply with the program, their financial health, and their probability of failure.

Given these capacity market constraints, the Commission should adopt the Staff Proposal on FSR affordability with modifications that consider current capacity market conditions. The Staff Proposal would require that CCAs "[h]ave substantially met their month ahead during the

[20] CalCCA Opening Comments at 14.

past year and year ahead RA requirements for the following year, in compliance with IRP procurement requirements." Setting the criteria for an FSR discount based upon compliance with the RA program, in a capacity constrained market, will ensure that some LSEs would be ineligible for a discount regardless of their efforts to comply with the program, their financial health, and their probability of failure. The Commission should remove this requirement for a CCA to be eligible to receive an adjustment to their FSR given CalCCA's analysis of estimated available net qualifying capacity (NQC) appears insufficient to meet RA requirements.[21] In addition, the Commission has yet to demonstrate that the new RA structure, including requirements in all 24 hours, will not exacerbate this capacity insufficiency. Without knowing whether the fleet is sufficient to meet needs, including in a more granular and complex RA mechanism, it would be unreasonable to implement this provision.

IV. FINANCIAL MONITORING

When establishing financial reporting requirements, the Commission must ensure it (1) respects the authority of local governing boards over CCA financial oversight, (2) protects CCAs' confidential information they report to Energy Division, (3) considers the financial position of each LSE, and (4) to the greatest extent possible, avoids immediate customer returns by an LSE coming as a surprise to the Commission or the POLR. The Staff Proposal, with the modifications proposed by CalCCA,[22] best meets these four objectives because it requires financial reporting dependent upon clearly defined financial metrics and clearly defines a pathway to end financial reporting, keeps reported information confidential, and allows Energy Division to gain greater insight into a CCA's financial health upon a CCA triggering financial reporting. The Commission should adopt the Staff Proposal with CalCCA's recommended

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[21] CalCCA Opening Comments at 13-16.

[22] *Id*. at 7-11.

modifications and reject party recommendations described below. These proposals would require reporting regardless of the CCAs' financial positions, expose confidential information to other market participants/counterparties, impose onerous reporting requirements of information already available, or usurp the CCA governing board's authority.

A. The Commission Should Not Require Continual Financial Reporting from CCAs That Have Not Triggered Financial Monitoring

The IOUs recommend the Commission adopt regular financial reporting for CCAs, rather than financial reporting upon meeting certain triggers. PG&E recommends the Commission require all CCAs to report on each of the triggers proposed in the Staff Proposal on a quarterly basis.[23] CalCCA generally supports the triggers in the Staff Proposal with modifications,[24] but does not support requiring CCAs to continually report on the metrics, even if a CCA has not triggered reporting. Requiring quarterly reporting for all CCAs regardless of whether a CCA has experienced a triggering event would be unnecessary.

SCE suggests that the Staff Proposal "relies too much on the honor system" regarding the reporting of triggering events.[25] CalCCA disagrees. Unlike profit-motivated LSEs, CCAs make their financial circumstances public, both in their Board packets and through links on the CalCCA website. In addition, the Commission has important existing enforcement mechanisms that it could apply to financial reporting. As CalCCA describes in its Opening Comments, failure to report a triggering event could be considered a Rule 1 violation, meaning CCAs would be obligated to report a triggering event or face the consequences of a Rule 1 violation. Relying on

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[23] PG&E Opening Comments at 13. The triggers CCAs would be required to report on quarterly are: downgrade below investment grade credit rating, Days Liquidity on Hand (DLOH) less than 45 days, Debt Service Coverage Ratio falls below 1.0, cash reserves is below 5% of annual expenses, default on procurement contract required to meet Resource Adequacy requirements or to the CAISO scheduling coordinator due to non-payment, insolvency or bankruptcy.

[24] CalCCA Opening Comments at 7-9.

[25] SCE Opening Comments at 26.

existing enforcement mechanisms will ensure CCAs report upon identification of a trigger event. Therefore, rather than requiring regular reporting, the Commission should require a CCA to assess its financial metrics once every 60 days, and report to Energy Division within 10 days if it observes a trigger event.

Cal Advocates recommends modifying the Staff Proposal's trigger "downgrade below investment grade credit rating"[26] to "lacks investment grade credit rating." The Commission should reject this modification. First, the lack of a credit rating alone is not indicative of poor financial health. The Staff Proposal recognizes the limits of relying on a credit rating and thus relies on other financial health metrics that a credit rating agency would similarly review. Requiring an investment grade credit rating to avoid continual financial monitoring by the Commission would place undue burden on smaller or recently-formed CCAs. As described in CalCCA's April 15, 2022 Reply Comments,[27] obtaining a credit rating by an independent agency is costly and requires an extreme amount of time and effort that may be too burdensome for smaller or recently-formed LSEs. Additionally, the Cal Advocates proposal would have the practical effect of placing all newly-formed CCAs, irrespective of financial health, directly into financial monitoring since such entities will not have the requisite financial history to obtain any credit ratings. Requiring credit ratings of all CCAs would be unnecessarily burdensome, particularly when Energy Division can already obtain the information necessary to discern a CCA's financial health through the triggers included in the Staff Proposal.

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[26] Staff Proposal at 9.

[27] *California Community Choice Association's Reply Comments on Administrative Law Judge's Ruling Distributing Workshop Agenda and Providing Questions for Additional Post Workshop Comments*, R.21-03-011 (April 15, 2022) at 13.

B. As Long as the POLR is Also a Market Participant, the Commission Must Not Provide the POLR with Confidential Information About LSEs Who Trigger Financial Monitoring

SDG&E recommends that the POLR be notified once a CCA triggers any of the financial monitoring conditions.[28] PG&E recommends that if, once a CCA reports a trigger, the Commission expects a CCA failure or expects the CCA's liquidity is inadequate to meet its needs, the Energy Division must inform the POLR of the potential need for POLR services and hold a joint meeting between the POLR, Energy Division, and CCA to prepare "mitigation steps."[29] CalCCA cautions against adopting SDG&E and PG&E's recommendation without modifications to provide additional precautions that would avoid providing the POLR with confidential information.

Providing confidential financial information about one LSE to another LSE and/or counterparty will put the LSE receiving the financial information at a competitive advantage. The IOU acts as both a POLR and an LSE. In its LSE role, the IOU directly competes with a CCA and competes with CCAs in the same markets to procure capacity, energy, and GHG-free attributes to serve their customers. Additionally, CCAs and IOUs may contract with each other to buy and sell these products. If the POLR as an LSE possesses non-public information about a financial reporting trigger, they may take actions in buying from and/or selling to the CCA that they would not have if they were positioned similar to any other market participant. A CCA triggering financial reporting *will not* always mean the CCA will return load to the POLR, and, therefore, it is too early for Energy Division to report to the POLR upon a CCA triggering financial monitoring.

PG&E's proposal presents a different problem. To implement PG&E's approach requires Energy Division to concretely assess a CCA's financial circumstances – a highly subjective

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28 SDG&E Opening Comments at 12.

29 PG&E Opening Comments at 12.

determination. It would also require the Energy Division to pre-judge the outcome of financial circumstances. Even if a CCA were strained financially, there are often mitigation measures available to support a favorable outcome.

Finally, the POLR's need for a CCA's financial information remains unclear, given the POLR would not conduct procurement in anticipation of customer return. If the Commission notifies the POLR that a CCA has triggered financial reporting, would the POLR take any concrete steps to prepare for customer return that is not guaranteed to occur? If there are steps the POLR would take after a CCA triggers financial reporting, the Commission must weigh the benefits and impacts of taking action. That is, what benefit is provided through providing this information to the POLR and what is the impact of intervening in a market with the provision of otherwise confidential information affecting the competitiveness of the CCA. For these reasons, CalCCA continues to recommend the Commission require Energy Division to keep confidential: (1) the fact that a CCA triggered financial reporting and (2) the reported information.

If, however, the Commission does allow Energy Division to share financial information with the POLR and identify the entity that triggered financial reporting, then the Commission must require the POLR to establish rules that dictate how the POLR will protect confidential, market sensitive information received from Energy Division or the CCA. It must also develop procedures to prevent the sharing of confidential, market sensitive information from IOU employees serving in a procurement function, risk management function, or any functions beyond the IOU's POLR function.

C. The Commission Should Not Require CCAs to Provide Non-Confidential Financial Information to the POLR Upon Request, as this Information is Already Publicly Available for the POLR to Access

SCE recommends the Commission require CCAs to report non-confidential information to the POLR upon request.[30] The Commission should reject this recommendation. CCAs already post publicly available financial information and policies to their websites and these issues are addressed in their monthly Board packets.[31] The information posted provides data points necessary to calculate days liquidity on hand and debt ratio, risk management policies, and ratemaking policies and changes. This information captures several interacting factors that contribute to the financial health of an LSE. In addition, CalCCA has developed a page on its website to allow for easy access of each member's financial information and policies in a transparent and standardized format.[32] The Commission should not put unnecessary requirements on CCAs to provide the POLR with public information upon request, as this information is already available for the POLR to easily access whenever it chooses.

D. The Commission Should Not Require Meetings Similar to the PRG as Part of CCA Financial Monitoring

SDG&E recommends the Commission modify the financial monitoring reporting requirements to include "meetings with consumer advocates and additional relevant stakeholders, similar to the [PRG] structure established by the IOUs."[33] The Commission should reject this recommendation, as it extends beyond the Commission's authority and serves no clear purpose.

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[30] SCE Opening Comments at 27.

[31] For an example of a CCA Board Packet, see: https://www.peninsulacleanenergy.com/board-of-directors/.

[32] *See:* https://cal-cca.org/key-cca-documents/.

[33] SDG&E Opening Comments at 12.

D.02-08-071 required the IOUs to establish Commission-authorized PRG to review and assess the IOUs' overall procurement strategy.[34] PRGs review RFO development, bid evaluation and rankings, hedging strategies, and procurement portfolio positions and transactions, among other functions.[35] The PRGs are intended to allow interested, non-market-participant parties with the ability to review and provide recommendations on IOU procurement that is ultimately subject to Commission oversight and approval.

While the Commission has oversight authority over IOU procurement activities and financials, it does not have the same authority with respect to CCAs. Instead, it is the CCA local governing boards that have oversight and approval authority over CCA procurement activities and financial decisions. Therefore, unlike with the IOUs, the Commission cannot require CCAs to modify their practices in response to recommendations made by a PRG-like meeting.

Given that the Commission has no authority to dictate CCA procurement and financial decisions, SDG&E's intended purpose of PRG-like meetings is unclear. SDG&E's comments fail to provide any details on the expected outcomes of these meetings. SDG&E also fails to provide any details on who would participate, how the Commission would ensure the participants have the expertise necessary to participate, and how the Commission would ensure confidential information is not shared with other market participants. In establishing the PRG, the Commission determined it was necessary in order to, "offer assessments and recommendations to each utility and then to the PUC when the contracts and/or reasonableness

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[34] D.02-08-071, *Interim Opinion*, R.01-10-024 (Aug. 22, 2002): https://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/18659.PDF.

[35] D.07-12-52, *Opinion Adopting Pacific Gas and Electric Company's, Southern California Edison Company's, and San Diego Gas & Electric Company's Long-Term Procurement Plans*, R.06-02-013 (Dec. 20, 2007), at 119: https://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/76979.PDF.

criteria are submitted for expedited PUC review."[36] Since the CCA would not have a filing with the Commission that would necessitate such review by parties that would intervene in a proceeding, it is not clear what purpose SDG&E's proposal would serve.

The PRG process is a time-consuming one, and mirroring this process for financial monitoring CCAs would add a substantial amount of work for Energy Division, CCAs, and participating stakeholders. The Commission should not introduce a new time-consuming task with no authority to impact outcomes or clear purpose. To do so would result in unreasonable spending of customer funds.

The purpose of financial monitoring should be to ensure that the Commission and the POLR are not surprised by immediate customer returns. The Commission should therefore forego the establishment of a PRG-like meeting for financial monitoring of CCAs and instead adopt the process in the Staff Proposal, which would require meetings between Energy Division and the CCA triggering financial reporting on up to a monthly basis.

E. The Commission Should Not Adopt Any Triggers that are Undefined or that Introduce Subjectivity

SDG&E recommends adding additional financial reporting triggers, including (1) reasonable expectation bankruptcy will occur, (2) uncertainties about the CCA's ability to continue as a going concern or any adverse opinion or material weakness in a CCA's audited financial statement, and (3) the filing of a material lawsuit that could significantly adversely impact past, present or future financial results.[37] The Commission should reject these additional triggers that include undefined, unquantifiable, and subjective metrics such as "***reasonable expectation***…", "***uncertainties*** about a CCAs ability to continue…", and "filing of a ***material*** lawsuit that could

[36] D.02-08-071 at 25.
[37] SDG&E Opening Comments at 11.

significantly adversely affect past, current or future financial results." These triggers would introduce ambiguity as to whether a CCA has hit a trigger and whether the trigger actually reflects financial difficulties. What is reasonable, what is uncertain, and what is significant are subjective – what may be uncertain to one entity may not be uncertain to another. Because the Commission and parties are contemplating enforcement mechanisms for failure to report a triggering event (e.g., Rule 1 violations, financial penalties, etc.), it must be completely clear how to determine whether a triggering event occurred. The Commission should aim to set the financial reporting triggers based upon verifiable metrics that leave no room for interpretation around whether a CCA hit the trigger.

Furthermore, SDG&E's proposed trigger regarding the filing of a material lawsuit is not necessarily related to financial health, unlike the financial metrics included in the Staff Proposal. The mere filing of a lawsuit against a CCA also does not necessarily indicate the potential of CCA financial distress, as SDG&E states, nor would it foresee a judgment that would be adverse to a CCA's financial health.

Finally, SDG&E's proposed additional triggers present challenges for creating a process whereby a CCA that is financially monitored can exit financial monitoring. Unlike the other triggers suggested by the Staff Proposal which could present clear thresholds for CCAs to exit financial monitoring, SDG&E's proposed additional triggers do not present a clear path for CCAs to exit financial monitoring. It is unclear how a CCA can remedy "uncertainties" related to a CCA's financial statement or "reasonable expectation" of an insolvency or bankruptcy and absent clear parameters, CCAs could be subject to extended and unnecessary financial monitoring. SDG&E's proposed material lawsuit trigger also presents a scenario where a single lawsuit could result in a CCA remaining in financial monitoring for years, irrespective of the nature of the lawsuit or the likelihood that the plaintiff(s) is likely to succeed in its claims.

F. The Commission Should Adopt Staff's Proposed Financial Monitoring Triggers, as Parties Proposed Recommendations to the Triggers are Excessive, or Lead to Unintended Consequences

Several parties recommend modifying the triggers in the Staff Proposal to make them more stringent, including raising the percent cash reserves, days liquidity on hand (DLOH), and debt service coverage ratio triggers.[38] The Commission should reject these recommendations as they are excessively and unnecessarily stringent, in some cases, tripling the requirements under the Staff Proposal. For example, the Staff Proposal would trigger financial reporting if DLOH dips below 45 days,[39] while SDG&E proposes DLOH of 90 days.[40] Additionally, while a debt service coverage ratio of 1.0-1.25 signifies continuing financial viability and is not an indicator of financial distress, SDG&E proposes to use a debt service coverage ratio of 1.5 without any explanation as to why a higher trigger is warranted.[41] SCE suggests that the 5 percent cash reserves is set too low. The only rationale SCE provides to support its claims is that targeted reserves in CCA implementation plans typically range from 15 percent to 30 percent.[42] A CCA's targeted cash reserves and cash reserves that point to financial distress should not be equivalent. This trigger offers little value as it is duplicative of the DLOH trigger and operationally it may lead CCAs to draw down lines of credit and increase interest costs for no commercial reason other than to comply with the metric.

Other parties recommend adding additional triggers such as current ratio and unrestricted net position.[43] The Commission should decline to adopt these additional triggers, as the triggers proposed by Staff are better indicators of financial distress.

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38 SCE at 27, SDG&E at 10-11.
39 Staff Proposal at 9.
40 SDG&E at 10.
41 *Id*.
42 SCE at 27.
43 Cal Advocates at 18, SDG&E at 10.

- Current ratio is a less reliable measure of financial strength than debt service coverage ratio - The debt service coverage ratio below one, as proposed by Energy Division Staff signifies losses or slim surpluses and should be used to trigger financial reporting.

- Unrestricted net position, as CalCCA understands the argument, duplicates the DLOH metric, since CCAs do not have substantial capital assets.

Any financial monitoring proposal should focus on the ability for the Commission to evaluate useful information that provides the Commission with indicators of potential customer return – not on requiring CCAs to report financial information as often as possible, even when they are in good financial health. There is insufficient information in the record to point to the need to go from no financial monitoring at all to financial monitoring based upon triggers that a CCA may hit even when they are financially stable.

The Commission should therefore adopt the triggers in the Staff Proposal with the clarifications and modifications made by CalCCA in opening comments. If after implementing the financial monitoring program, the Commission finds the triggers are not effective in providing the Commission with advance notice of likely customer returns, then the Commission can consider if it needs to update the triggers at that time.

V. CONTRACT ASSIGNMENT

A. The Commission Should Reject Cal Advocates' ROFR Proposal and SEIA/LSA's Required Contract Novation Proposal and Alternative Proposal

Cal Advocates and SEIA/LSA continue to support either a ROFR or mandatory assignment of contracts from the CCA to the POLR in the event of a return of customers without notice. The methodology and effectiveness of these proposals continues to fail to provide meaningful and enforceable remedies. Notably, these parties mistakenly argue:

- CalCCA misstates the law by arguing that CalCCA confused Chapter 11 and Chapter 9 bankruptcy process;

- PU Code 387 gives clear authority to allow the Commission to mandate a ROFR;

- The ROFR would not impact competitiveness in contract negotiations; and
- The assignment of a contract to the POLR should be completely one sided and lie with the generator.

The Commission should reject these arguments for the reasons described in sections V.A.1 and V.A.2.

1. The Commission Should Reject Cal Advocates' Claims that Concerns Regarding ROFR Enforcement in Bankruptcy Are Overstated

Cal Advocates suggests that:

> CalCCA misstates the law. CalCCA's references to the "bankruptcy estate" "reorganizing" and the Supremacy Clause, among others, suggest that CalCCA confuses Chapter 11 bankruptcy, which covers corporate reorganization, with Chapter 9 bankruptcy, which covers CCAs and other municipalities. Federal bankruptcy courts have limited authority in a Chapter 9 case, due to states' reservation of their powers over municipalities under the Tenth Amendment.[44]

The Cal Advocates' argument misses the point. The provision of the Bankruptcy Code that makes *ipso facto* clauses, like the proposed automatic reassignment provision, generally unenforceable in bankruptcy is expressly incorporated into chapter 9. 11 U.S.C. § 901. Thus, such a clause would likely be assignable only at the election of the entity seeking bankruptcy protection – whether in chapter 9 or chapter 11. Cal Advocates also ignore that chapter 9 relief is available only to a "political subdivision or public agency or instrumentality of a State." 11 U.S.C. § 101(40). While there is one example of a California CCA seeking relief under Chapter 9,[45] an IOU like PG&E is not so eligible and may only seek relief under chapter 11. Finally, while Section 904 of the Bankruptcy Code limits the Bankruptcy Court's ability to interfere with an eligible

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[44] Cal Advocates Opening Comments at 6-7.

[45] *In re Western Community Energy*; Bankr. C.D. Cal., Case No. 21-12821.

municipality's property, revenues, and powers of governance, by electing federal bankruptcy relief the municipality subjects itself to the requirements of that chapter the Bankruptcy Code.[46]

The case that Cal Advocates cites reiterates these basic principles.[47] While the Bankruptcy Court's authority to afford interim relief in a chapter 9 proceeding is limited by Section 904,[48] the Bankruptcy Court will ultimately be asked to confirm a plan of adjustment that provides for the municipality's reorganization on a final basis.[49]

2. The Commission Does Not Have Clear Authority Under PU Code 387 to Mandate a ROFR

Cal Advocates asserts that the Commission has the requisite jurisdiction under Section 387 to mandate a ROFR in favor of the POLR in every wholesale RA energy contract.[50] Section 387 addresses regulation of the *POLR*, not LSE procurement – an area exclusively within the domain of the local authorities that regulate the CCA – and does not extend the Commission's authority to procurement jurisdiction over CCAs.

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46 *See County of Orange v. Merrill Lynch & Co. (In re County of Orange)*, 191 B.R. 1005, 1021 (Bankr. C.D. Cal. 1996) ("By authorizing the use of chapter 9 by its municipalities, California must accept chapter 9 in its totality; it cannot cherry pick what it likes while disregarding the rest."); *see also In re City of Vallejo*, Case No: 08-26813, Dkt. No. 473, p.4:7-12 (Bankr. E.D. Cal. March 13, 2009) ("[w]hen a state authorizes its municipalities to file a chapter 9 petition it declares that the benefits of chapter 9 are more important than state control over its municipalities.").

47 *See* Cal Advocates Opening Comments n. 15 citing *United States v. Bekins*, 304 U.S. 27, 54 (1938) ("The State acts in aid, and not in derogation, of its sovereign powers. It invites the intervention of the bankruptcy power to save its agency which the State itself is powerless to rescue.").

48 *See, e.g., In re City of Detroit* 841 F.3d 684 (6th Cir. 2016) (Bankruptcy Court lacks authority to enjoin chapter 9 debtor against shutting off water supply) [Cal Advocates n. 17]).

49 See *In re Valley Health System* (Bankr. C.D. Cal. 2010) 429 B.R. 692 (confirming chapter 9 plan of adjustment including the sale of assets, after analyzing California state law requirements) [Cal Advocates n. 17]).

50 Cal Advocates Opening Comments at 8 (footnotes omitted). ("Public Utilities Code Section 387, subsections (g), (h), (j,) and (k) provide authority for the Commission to exercise oversight over CCAs in order for the POLR to ensure continuity of service. This authority includes explicit, broad authority to set POLR-related rules for all LSEs, and to "do all things that are necessary and convenient in the exercise of" "supervis[ing] and regulat[ing] each provider of last resort, as necessary.")

Nearly all of the Section 387 subsections focus on the Commission's regulation of POLR, not the LSEs returning customers. They address establishment of an entity as POLR (subsections (b)(c)), facilitating applications by LSEs to request transfer of responsibility (subsection (d)), transition of obligations from one POLR to another (subdivision (e)), additional threshold attributes for POLRs (subsection (f)), POLR cost recovery (subsection (g)), customer billing (subsection (i)), and general oversight of the POLR (subsection (j)).

The only language that relates directly to non-POLR LSEs is subdivision (h), which allows the Commission to "[e]stablish rules for all load-serving entities in preparation of any potentially large and unplanned customer migration." While the statute gives the Commission authority to "do all things that are necessary and convenient" to its supervision and regulation of the *POLR*, that does not mean creating new areas of authority not otherwise clearly provided by the legislature. The legislature made clear that procurement authority lies with the LSE. For example, Section 454.52(b)(3) places oversight for CCA procurement plans with the local authority, and Section 380 subsections (b)(5) and (h)(5) direct the Commission to maximize the ability of CCAs to determine generation resources used to serve their customers. Given the legislature's directives, significantly expanding authority based on the language in Section 387 is unsupportable without clear and express language to the contrary. Additionally, even if Section 387 conferred the needed authority on the Commission, a ROFR requirement is not "necessary" or "convenient", as discussed below.

3. ROFR or Mandatory Contract Novation Will Complicate CCA Contracting and Add Unnecessary Procurement Costs to CCAs

Cal Advocates contends that a ROFR will not impact the competitiveness of procurement. Cal Advocates overlooks important impacts of the ROFR on the wholesale RA market and CCA competitiveness.

To support its contention, Cal Advocates states:

> In addition, SEIA/LSA noted that "at the [March 7, 2022] workshop, CalCCA acknowledged that a required novation/assignment of a procurement contract, in most circumstances, would mitigate risk 'because now you have the probability of two parties defaulting which is less than the probability of one-party defaulting.'"[footnote omitted] That is, CalCCA already conceded the SCE argument that the Staff Proposal cites. The full proceeding record supports rejection of CalCCA's assertion that the Cal Advocates ROFR would place LSEs at disadvantage in their contract negotiations. The Commission should not rely on this argument to justify rejecting the Cal Advocates ROFR.[51]

Cal Advocates ignores the fact that a seller entering into a contract with an LSE with a ROFR where the POLR is either in bankruptcy or in financial distress will be disadvantageous to the buyer. This is because the seller will take the risk that in the event of default, the contract may be assumed by an entity (the POLR) in financial distress. Had this provision been in place over the last 20 years, for a period of 4.5 years, an LSE would have been purchasing RA for which the Cal Advocates proposed ROFR would have been with an entity in bankruptcy. It is hard to imagine that the large quantity of RA purchased in that lengthy period would not have impacted the contracts of LSE buyers strictly because the POLR and not the primary buyer was not financially solvent. The viability of this proposal does not rest on Cal Advocates' mistaken understanding of CalCCA "conceding" to anything. The fact remains that the financial status of the POLR can and will have an impact on any contract entered into by an LSE which has a ROFR provision.

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[51] Cal Advocates Opening Comments, at 9: https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M496/K416/496416748.PDF.

B. Energy Division Should Clarify the Process for Implementing a Discount to the FSR/Re-entry Fee Based upon the Assignment of an RA Contract

Based upon the comments from SCE, Energy Division staff should clarify how the discounting of a re-entry fee for an assigned RA contract will be performed. The cost of RA enters into the re-entry fee calculation as the quantity of RA needed to serve the returning load multiplied by the RA benchmark price. In SCE's comments, it appears that they have assumed that the credit will be done on the quantity side of this equation. That is, the re-entry fee will be reduced by subtracting from the RA quantity required, the quantity of the RA contract that is assigned to the POLR. If this is the methodology selected, then SCE's comments are logical in that the POLR will only avoid the cost of those MWs if the CCA either continues to pay the resource or has already pre-paid the resource.

CalCCA had interpreted the proposal to discount the price side of the equation. That is, the calculation of the re-entry fee would reduce the RA benchmark to the price of the assigned contract for the quantity of the amount of RA that is assigned to the POLR. For example, if an LSE had a 100 MW RA assignable contract at a price of $5/kw-month when the benchmark is $7/kw-month, the re-entry fee would reflect the lower assigned contract price for its quantity and would calculate the remaining RA at the benchmark price. Using this calculation, the payment of the contract by the POLR can occur and the CCA/customers subject to the re-entry fee would effectively pay the benchmark for all RA not met by assigned contracts but the lower price of the assigned contract for the contracts that are assigned, the re-entry fee would be lowered to the price of the assigned contract.

Given the two different interpretations of how this discounting process can occur, Energy Division staff should clarify which variation they are proposing.

VI. CONCLUSION

For all the foregoing reasons, CalCCA respectfully requests consideration of the recommendations herein.

Respectfully submitted,

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General Counsel and Director of Policy
CALIFORNIA COMMUNITY CHOICE ASSOCIATION

May 5, 2023

APPENDIX A
To
CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S REPLY COMMENTS ON RULING OF THE ASSIGNED ADMINISTRATIVE LAW JUDGE ENTERING STAFF PROPOSAL INTO THE RECORD AND NOTICING PUBLIC WORKSHOPS

Data Sources for Table 1: 2021-2023 Stack Analysis

Row(s)	Source
1	CAISO 1-in-2 Load Forecast. Monthly peak demand forecast for a median (1-in-2) weather year. Values for 2021 and 2022 are from the CEC's 2021 California Energy Demand (CED) Forecast, Mid Baseline AAEE Scenario 3 AAFS Scenario 3 using the monthly maximum of the CAISO managed net load: (https://efiling.energy.ca.gov/GetDocument.aspx?tn=241174). Values for 2023 are from the CEC's 2022 CED, Planning Scenario using the monthly maximum of the CAISO managed net load: (https://efiling.energy.ca.gov/GetDocument.aspx?tn=248359&DocumentContentId=82768)
2	Planning Reserve Margin per Commission D.22-06-50.[52]
4-7	California ISO NQC List. The CAISO lists the net qualifying capacity (NQC) for all resources in the CAISO footprint. Values for 2021 are from the CAISO 2021 NQC list (http://www.caiso.com/Documents/NetQualifyingCapacityList-2021.xlsx last updated 11/12/2021), for 2022 are from the CAISO 2022 NQC list (http://www.caiso.com/Documents/Final-Net-Qualifying-Capacity-Report-for-Compliance-Year-2022.xls last updated 11/02/2022) and values for 2023 are from the 2023 NQC list (http://www.caiso.com/Documents/Final-Net-Qualifying-Capacity-Report-For-Compliance-Year-2023.xls last updated 03/01/2023).
8	Event-Based Demand Response. Demand response quantities are from the Commission's Resource Adequacy Compliance Materials.[53] Demand response totals include avoided losses and are from event-based programs at PG&E, SCE, and SDG&E.
9	Imports. Imports values for 2021 are the actual aggregated import RA from 2021 reported by the CAISO (http://www.caiso.com/Documents/HistoricalResourceAdequacyImportAggregateData.xlsx). Imports for 2022 and 2023 reflect the CEC's assumed RA imports available to the CAISO market.[54]
10	Thermal Plant Derate. Many thermal generators cannot produce maximum output at certain temperatures, leading to plant derates. For this reason, resource owners may not sell their full NQC as RA capacity. For thermal plants whose NQC is listed as equivalent to their Net Dependable Capacity, we apply a technology-specific thermal derate estimated from

[52] D.22-06-050, *Decision Adopting Local Capacity Obligations For 2023 - 2025, Flexible Capacity Obligations For 2023, and Reform Track Framework*, R.21-10-002 (June 23, 2022): https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M488/K540/488540633.PDF.

[53] 2023-2025 Demand Response Totals: https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power-procurement/resource-adequacy-homepage/resource-adequacy-compliance-materials.

[54] Joint Agency Reliability Planning Assessment - SB 846 Quarterly Report and AB 205 Report, at 43: https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-ESR-01.

	historical ambient temperature derates within the CAISO.[55] Our approach parallels recent Commission discussions regarding the need to include thermal derates in reliability modeling.[56]
11	D.21-12-015 allowed: "excess resources from an IOU's *existing* portfolios may be used to meet or supplement these procurement targets up to the upper end of its contingency procurement target."[57] Line 11 represents the total of the three IOUs' excess resources from their portfolios as filed in the IOUs' 2022 Excess Resources Reports.[58] No excess is assumed for 2021.
12	D.21-12-015 authorized the IOUs to "continue their procurement efforts and endeavor to meet and exceed their respective incremental procurement targets to achieve the range of additional procurement authorized in this decision for months of concern… As noted previously, a combination of RA eligible and non-eligible resources will be used to meet the contingency procurement target range."[59] While these resources were intended to be incremental to supply available to LSEs to meet their 16% requirement, a significant amount appears to erode existing supply.[60] This erosion occurs because many of the resources are qualified to provide RA and, were it not for the IOU procurement, could provide RA to other LSEs to meet their RA compliance requirements.[61] Excess procurement begins in 2022.
13	Retention for substitution. IOUs are entitled to retain RA beyond their bundled needs for substitution during planned outages. While 2022 data are not yet available, this assessment relies on the 2021 resources retained by IOUs as reported in the IOUs' 2021 Excess Resources Reports.[62]
16	Expected new-build resources online by 8/1/23. Resources mandated by the Commission pursuant to D.19-11-016 and D.21-06-035 assuming a 40% delay and/or failure rate.

[55] Ambient derate data can be found in the CAISO's daily Curtailed and Non-Operational Generator Prior Trade Date Reports: http://www.caiso.com/market/Pages/OutageManagement/CurtailedandNonOperationalGenerators.aspx.

[56] *Proposal for Derating Thermal Power Plants based on Ambient Temperature*: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/resource-adequacy-homepage/r21-10-002/4_ed-proposal-for-phase-3-derates.pdf.

[57] D.21-12-015 at 103.

[58] https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power-procurement/resource- adequacy-homepage/resource-adequacy-compliance-materials.

[59] D.21-12-015 at 101-102.

[60] The additional resources procured under this authorization are described in the Commission's RA materials with additional detailed provided in advice letters filed by the IOUs. 2022 IOU Excess Resources Reports: https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power- procurement/resource-adequacy-homepage/resource-adequacy-compliance-materials.

[61] CalCCA used the amounts in the IOU Excess Resources Reports and removed those resources that would not otherwise qualify for RA (*e.g.*, Emergency Load Reduction Program). The resources included in row 12 include firm energy imports, additional RA contracts, tolling agreements, extension of existing contracts that are RA eligible, and contracts for increased output where the efficiency upgrades likely could have been financed by an RA contract with an LSE.

[62] https://www.cpuc.ca.gov/industries-and-topics/electricalenergy/electric-power-procurement/resource-adequacy-homepage/resource-adequacy-compliancematerials.