

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

Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local and Flexible Procurement Obligations for the 2019 and 2020 Compliance Years.

Rulemaking 17-09-020  
(Filed September 28, 2017)

**COMMENTS OF THE INDEPENDENT ENERGY  
PRODUCERS ASSOCIATION ON THE PROPOSED  
DECISION OF ADMINISTRATIVE LAW JUDGES CHIV  
AND ALLEN**

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The Proposed Decision (PD) of Administrative Law Judges Chiv and Allen addresses refinements to the Commission’s Resource Adequacy (RA) program to begin in the 2020 compliance year, including (a) refinements to the Multi-Year RA Framework and (b) identifying the distribution utilities as the central procurement entity (CPE) for their distribution service areas. In these comments, the Independent Energy Producers Association (IEP) provides a brief overview of its comments, comments on the policy implications of the PD and makes recommendations, and recommends some corrections to the text to accurately represent IEP’s positions in this proceeding.

**I. OVERVIEW**

The PD appropriately endorses a multi-year RA framework of at least three years in duration while deferring additional consideration of duration to Track 3 of this proceeding. However, the PD errs by setting the Year 3 requirement at a minimum of 80% of the forecasted need. The Commission should set the Year 3 obligation at a minimum of 90% of the forecasted

need based on California Independent System Operator (CAISO) studies. Setting the Year 3 requirement at 90% will minimize the risk of under-procurement of needed RA capacity.

The PD also errs by designating the distribution utilities as the CPE. The proposed CPE structure demands further discussion and analysis. The risk of adopting a structure that has not been thoroughly considered is high, particularly if distribution utilities serve as the CPE. Moreover, the PD risks impeding implementation of a multi-year RA framework beginning in 2020, because of the many unanswered questions and uncertainties as to how the distribution utility-as-CPE structure will function in relation to the RA obligations of other load-serving entities (LSEs). Consideration of the appropriate CPE structure should be deferred to Track 3 of this proceeding, where the concept will benefit from additional discussion and review.

## **II. COMMENTS ON POLICY ISSUES**

Decision (D.) 18-06-030 (the Track 1 Decision) determined that implementation of multi-year RA requirements should be initiated for 2020.<sup>1</sup> D.18-06-030 concluded that implementation of a central buyer structure for multi-year local RA requirements should be initiated for 2020.<sup>2</sup> D.18-06-030 also determined that further study should be initiated to develop multi-year local RA requirements and guide multi-year local RA procurement.<sup>3</sup>

The PD decides that the multi-year RA framework shall be for a minimum duration of three years.<sup>4</sup> In addition, the PD determines that in Year 1 and Year 2 the minimum required procurement of local RA capacity shall be 100% of the forecasted need (based on CAISO studies), while the Year 3 minimum required procurement local RA capacity shall be

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<sup>1</sup> D.18-06-030, Conclusion of Law 12.

<sup>2</sup> D.18-06-030, Conclusion of Law 13.

<sup>3</sup> D.18-06-030, Conclusion of Law 14.

<sup>4</sup> PD, Ordering Paragraph 3.

80% of the forecasted need.<sup>5</sup> The PD decides that the distribution utilities shall serve as central buyers for their respective distribution service areas for the multi-year local RA program.<sup>6</sup> The PD concludes that the central buyers shall engage in full procurement of local resources within their respective service areas.<sup>7</sup> In addition, the PD determines that the central buyers shall conduct a transparent, competitive, all-source solicitation for multi-year local RA procurement consistent with specified requirements.<sup>8</sup>

Below, IEP comments on these two critical concepts, *i.e.*, the multi-year framework and the structure of a CPE.

**A. Multi-Year Framework**

While IEP continues to support the Energy Division proposal for a five-year RA duration, extending the existing duration from two to three years, as proposed by the PD, represents a significant improvement and may be readily implemented beginning 2020 irrespective of what entities are ultimately subject to the RA procurement obligation.

The PD errs, however, by setting the Year 3 minimum procurement requirement at 80% of the forecasted need. Under the PD's approach, fully one-fifth of the local capacity the CAISO's studies show to be needed in Year 3 will be at risk of remaining uncontracted to provide RA capacity in that year. Many parties support setting the Year 3 obligations at higher levels than the level set by the PD. For example, the Energy Division and IEP recommend setting the Year 3 obligation at a minimum of 90% of forecasted need. Many parties recommend setting the Year 3 obligation at 100% (*e.g.*, Pacific Gas and Electric Company, Calpine, NRG, Southern California Edison Company, Western Power Trading Forum). Because only 30 months

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<sup>5</sup> PD, Ordering Paragraph 6.

<sup>6</sup> PD, Ordering Paragraph 1.

<sup>7</sup> PD, Ordering Paragraph 2.

<sup>8</sup> PD, Ordering Paragraph 7.

separates the annual showing (October) with the beginning of the third year, setting a relatively high obligation in Year 3 lowers the risk of under-procurement and, thus, lowers the risk that CAISO backstop procurement will be exercised.

The PD indicates that the primary reason for establishing a Year 3 obligation at 80% is to avoid the risk of over-procurement.<sup>9</sup> However, the PD adopts mechanisms specifically designed to lower the risk of over-procurement. For example, the PD proposes to incorporate engineer-managed adjustments for CAISO-approved transmission projects. If the CAISO management approves any transmission projects for Years 2 and 3, the CAISO shall incorporate these projects into the associated year's studies and adjust local RA needs as appropriate.<sup>10</sup> In addition, the PD mitigates the financial impact of over-procurement of local RA resources, if it occurs, by enabling excess procurement to apply towards system and flexible RA capacity needs.<sup>11</sup>

In summary, one-fifth of the local RA capacity needed in Year 3 to meet local RA requirements risks being uncontracted if the Year 3 obligation is set at 80% of the forecasted need. Because the PD proposes various mechanisms to mitigate the risk of over-procurement, the Commission should set the Year 3 minimum procurement requirement at 90% of the forecasted need to help ensure grid reliability.

**B. Central Procurement Entity**

The PD finds broad support among parties for a central buyer structure for at least some part of local RA procurement. From that broad, general support for central procurement, the PD proposes that distribution utilities will serve as the CPE and will procure 100% of the local RA capacity need in a multi-year framework beginning in the 2020 compliance year. This

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<sup>9</sup> PD, p. 29.

<sup>10</sup> PD, p. 27.

<sup>11</sup> PD, p. 37.

schedule requires the CPE to initiate and complete procurement in 2019. But the PD is silent on several key issues that must be resolved to ensure timely and transparent implementation of CPE procurement with the least disruption to energy and remaining RA capacity markets.

The risk of unintended consequences associated with the implementation of the CPE structure proposed by the PD is significant. Below are illustrative questions and concerns related to the PD's proposal to designate the distribution utility as the CPE:

- **To what extent does the CPE-procurement structure accommodate the terms and conditions of existing RA capacity contracts?** Power producers have entered into contracts with LSEs to provide RA capacity. Under the PD, LSEs may bid any contracted capacity into the CPE auction. However, LSE-procured capacity is at risk of not being selected in the competitive solicitation. What are the implications if contracted capacity does not clear the CPE auction? If the non-utility local RA capacity contract does not clear the CPE solicitation, how does the non-utility buyer of that capacity avoid Capacity Allocation Mechanism (CAM) charges that duplicate its procurement and effectively double its procurement costs?
- **What are the implications of the CPE procuring bundled RA (including system and flexible RA) when LSEs retain an obligation to procure and show system RA and flexible RA capacity?** The PD states that RA attributes shall remain bundled, and LSEs shall receive credits for any system or flexible RA capacity procured.<sup>12</sup> What impact will this model have on LSEs' forward procurement of system and flexible RA capacity? What are the protections against double-counting if the CPE procures bundled RA? Will suppliers be required to offer all flexible

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<sup>12</sup> PD, p. 37.

attributes when offering local capacity to the CPE? For local resources procured as RA but not offered to the CPE and for which there are substitutes, will the CPE buy substitutes to meet its procurement goals?

- **To what extent will the distribution utility CPE structure exacerbate the exercise**

**of market power by the utilities?** Will the proposed separation between the distribution utility business functions and the CPE protect against the exercise of monopsony buying power or affiliate dealing? What compliance or transparency measures are necessary to ensure that utilities do not discriminate in favor of utility-owned and utility-contracted resources? What reporting will be needed to protect against discriminatory or other anticompetitive behavior?

- **Do the proposed RA procurement timelines align with timely compliance?**

Under the PD, the CPE runs its competitive solicitations for local RA capacity in the July – September timeframe. In late September or early October, LSEs are allocated final CAM credits for system and flexible capacity following the CPE auctions, and LSEs are required to make system and flexible RA showings by the end of October.<sup>13</sup> Because CPE auctions will clear bundled RA capacity, including system and flexible capacity, will LSEs await the final CPE auction results prior to procuring needed system or flexible RA capacity? To what extent will LSEs face uncertainty as to the amount of system and flexible RA capacity they need to comply with RA obligations? What is the risk that the schedule for CPE procurement triggers the need for CAISO backstop procurement?

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<sup>13</sup> PD, p. 55.

- **What is the impact on CAISO backstop procurement?** How will the CAISO treat local resources that have been procured as RA but not by the CPE? Will the CAISO assume that the resources are available to meet local requirements? What are the implications of authorizing the CPE to defer procurement of a local resource to the CAISO backstop procurement mechanisms, rather than through the solicitation process, if bid costs are deemed to be “unreasonably high”? What is the definition of “unreasonable”?<sup>14</sup>

In prior comments, IEP supported the concept of a CPE under specific conditions. First, the CPE must be creditworthy and positioned financially to support long-term contracting. Second, the CPE must be independent from market participants, including the utilities’ retail interests, to ensure fair and equitable outcomes. Third, adoption of a CPE should not become a barrier to implementation of a multi-year framework in program year 2020, as determined in the Track 1 Decision.<sup>15</sup>

The PD risks delaying timely implementation of a multi-year RA framework beginning in 2020, due to the many concerns, questions, and issues related to CPE-auction implementation. For example, the Track 2 decision will be on the Commission’s Business Meeting agenda no sooner than January 10, 2019. Assuming no delays, the distribution utilities, the LSEs, and resources have only four to five months to prepare for the CPE auctions.

### **C. Conclusion on Policy Issues**

In summary, the Commission should extend the duration of the multi-year RA framework to at least three years as proposed in the PD. However, the Commission should set the Year 3 RA obligation at 90% of the forecasted need (based on CAISO studies) to ensure

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<sup>14</sup> PD, p. 53.

<sup>15</sup> *Prepared Track 2 Testimony of Steven K. Kelly on Behalf of the Independent Energy Producers Association*, pp. 20-21.

against under-procurement of needed RA capacity, rather than adopt the PD's proposal to set the Year 3 obligation at 80% of forecasted need.

On the other hand, the Commission should defer adoption of the CPE structure at this time and simply retain the existing LSE-based RA program for now. A CPE structure based on a central role of distribution utilities, as proposed in the PD, raises many complex issues that should be addressed before the CPE structure is implemented. Fortunately, issues related to the duration of the multi-year RA framework and the amount of the annual obligation are independent from consideration of more complex issues related to the CPE structure. As a result, consideration of a CPE structure may be deferred to Track 3 without delaying implementation of the multi-year RA framework beginning in 2020.

### **III. CORRECTIONS**

IEP requests a change to Footnote 34 on page 24 of the PD. Footnote 34 cites IEP's Testimony at page 22 to support the statement that "Proponents of a shorter duration cite the many changes that can arise in five years ... as the basis for why procurement greatly increases the risk of over-procurement." In fact, IEP's Proposal and Testimony supported a longer, five-year forward duration to better ensure grid reliability, address known and unknown plant retirements, and accommodate shifting load. IEP requests deletion of the reference in Footnote 34 to IEP Testimony as supporting a shorter duration for the multi-year RA framework.

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