PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

FILED
09/06/19
02:42 PM

September 6, 2019

Agenda ID #17718
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 17-09-020

This is the proposed decision of Administrative Law Judges Debbie Chiv and Peter V. Allen. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's October 10, 2019 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4)(B).

/s/ ANNE E. SIMON
Anne E. Simon
Chief Administrative Law Judge

AES: gp2
Attachment

Decision **PROPOSED DECISION OF ALJS ALLEN AND CHIV**
(Mailed 9/6/2019)

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

PROPOSED DECISION CLARIFYING RESOURCE ADEQUACY IMPORT RULES

Summary

This decision clarifies the requirements governing the use of energy imported into California to meet Resource Adequacy requirements, as set forth in Decision (D.) 04-10-035 and D.05-10-042.

This proceeding remains open.

1. Background

On July 3, 2019, an Assigned Commissioner's Ruling (ACR) was issued that invited parties to respond to questions about the use of energy imported into California to meet resource adequacy (RA) requirements. As provided in the ACR, Decision (D). 04-10-035 adopted the following qualifying capacity methodology.

> Qualifying capacity for import contracts is the contract amount, provided the contract:
>
> 1. Is an Import Energy Product with operating reserves,
> 2. Cannot be curtailed for economic reasons, and

3a. Is delivered on transmission that cannot be curtailed in operating hours for economic reasons or bumped by higher priority transmission, or

3b. Specifies firm delivery point ([*i.e.*] not seller's choice).[1]

Additionally, the ACR noted that D.05-10-042 stated that non-unit specific, liquidated damages (LD) contracts would be phased out of the RA program. The decision found that these contracts increase the likelihood of double-counting resources and are not subject to deliverability screens, concerns that have the potential to impact long-term grid reliability.[2] However, in D.05-10-042, one category of non-unit specific LD contracts was deemed exempt from phase-out: LD contracts that met import deliverability requirements and demonstrated sufficient physical resources associated with them (*e.g.*, spinning reserves and firm energy delivery).

D.05-10-042 stated:

> Firm import LD contracts do not raise issues of double counting and deliverability that led us to conclude that other LD contracts should be phased out for purposes of RAR [resource adequacy requirements]. We note that firm import

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[1] D.04-10-035 at 54 (adopting Section 5 of the Workshop Report on Resource Adequacy Issues at 21, available at: http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/REPORT/37456.PDF). Note that under Section 5, the methodology was outlined as follows:

> QC = Contract Amount provided the contract:
>
> 1. Is an Import Energy Product with operating reserves
> 2. Cannot be curtailed for economic reasons
> 3a. Is delivered on transmission that cannot be curtailed in operating hours for economic reasons or bumped by higher priority transmission OR
> 3b. Specifies firm delivery point (not seller's choice)

[2] *See* Qualifying Capacity Methodology Manual Adopted 2017 (R.17-09-020) at 3-5, available at: https://www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=6442455533.

> contracts are backed by spinning reserves. Accordingly, we approve the exemption of firm import LD contracts from the sunset/phase-out provisions applicable to other LD contracts as adopted in Section 7.4.[3]

In September 2018, the California Independent System Operator's (CAISO) Department of Market Monitoring (DMM) issued a special report on RA imports. In that report, the DMM stated that RA imports are only required to bid into the day-ahead market and that imports can bid at any price up to the $1,000 per megawatt hour (MWh) offer cap without further obligation to bid into the real-time market if not scheduled in the day-ahead market or residual unit commitment process. DMM stated that the existing rules could allow a significant portion of RA requirements to be met by imports that may have limited availability and value during critical system and market conditions. For instance, RA imports could be routinely bid significantly above projected prices in the day-ahead market to help ensure they do not clear, thus relieving the imports of any further offer obligations in the real-time market.[4]

The CAISO raised similar concerns in its Resource Adequacy Enhancements stakeholder initiative, noting that:

> [T]he current RA import provisions may allow some RA import resources to be shown to meet RA obligations while also representing speculative supply (*i.e.*, no true physical resource or contractual obligation backing the RA showing) or being committed to other regions and double counted.[5]

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[3] D.05-10-042 at 68.

[4] DMM Special Report: Import Resource Adequacy (September 10, 2018) at 1-2, available at: http://www.caiso.com/Documents/ImportResourceAdequacySpecialReport-Sept102018.pdf.

[5] *See* Resource Adequacy Enhancements Straw Proposal – Part 1 (December 20, 2018) at 9, available at: http://www.caiso.com/Documents/StrawProposalPart1-ResourceAdequacyEnhancements.pdf.

Based on this information, the ACR was issued to seek comments on the concern that load serving entities (LSE) may be relying on unspecified imports for RA in a manner that does not conform with the requirements set forth in D.04-10-035 and D.05-10-042. The particular issue is that certain unspecified imports used to meet RA requirements may not provide firm energy delivery, raising concerns as to whether these resources will be able to deliver energy when it is needed most.

2. Assigned Commissioner's Ruling

The ACR invited parties to respond to the following questions about the RA import contract rules and obligations:

1. Should Commission decisions (a) require RA import contracts to include the actual delivery of firm energy with firm transmission and (b) clarify that only a bidding obligation is deemed not sufficient to meet RA rules?
2. Do parties agree that firm transmission capacity is required in addition to firm energy? Please explain why or why not.
3. Should the Commission clarify its rules, or are existing decisions and requirements sufficient? If the former, please propose clarifying language and/or how such clarifications should be established.
4. If the Commission determines that RA import contracts with a bidding obligation, but without delivery of firm energy with firm transmission, do not qualify as RA, how should these types of contracts be addressed going forward? Should these contracts be disallowed for the balance of 2019, beginning in 2020, or at a later date?
5. How should LSEs document that their RA import resources meet the Commission's import rules? Examples may include, but are not limited to, LSEs providing attestations or certifications for each import contract or attestations from the import provider.

6. If necessary, how should Energy Division staff determine compliance?
7. If it is determined that the imports used by an LSE do not meet the Commission's firm energy requirements, does the existing RA penalty structure provide enough deterrence to prevent further transactions of this type? If not, what additional remedies or corrective measures should be imposed?

Opening comments were filed on July 19, 2019 by the following parties: Alliance for Retail Energy Markets (AReM), Bonneville Power Administration (BPA), Calpine Corporation (Calpine), California Community Choice Association (CalCCA), CAISO, California Large Energy Consumers Association (CLECA), DMM, Green Power Institute (GPI), Independent Energy Producers Association (IEP), Morgan Stanley Capital Group Inc. (MSCG), NRG Energy, Inc. (NRG), Pacific Gas and Electric Company (PG&E), Powerex Corp. (Powerex), Public Generating Pool (PGP), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE).

Reply comments were filed on July 26, 2019 by CAISO, CLECA, DMM, Middle River Power LLC (MRP), MSCG, NRG, Powerex, Public Advocates Office (Cal Advocates), SDG&E, Shell Energy North America (US), L.P. (Shell), and SCE.

3. Discussion

The Commission first notes that numerous parties comment that RA import contracts should not be required to include actual delivery of firm energy with firm transmission but rather, recommend one (or more) of the following:

(a) An alternative approach to the RA import rules, such as inclusion of an energy bid price or offer cap in import contracts;[6]

(b) That clarification of the RA imports rules should be delayed until a future phase of this proceeding or to await resolution in other stakeholder processes;[7] and

(c) That clarification of the RA import rules may be unnecessary and/or the concern is overstated.[8]

As a preliminary matter, the Commission reiterates the purpose behind the ACR, as stated in the ruling:

> [T]he Commission is concerned that some load serving entities (LSEs) may be relying on unspecified imports for RA in a manner that does not conform with the D.04-10-035 and D.05-10-042 requirements and could undermine the integrity of the RA program. Specifically, some unspecified imports used by LSEs to meet RA requirements may not provide firm energy delivery, which raises the question of whether these resources will be able to deliver energy to the grid when it is needed most.[9]

Additionally, the ACR provides that "RA import resources that cannot perform if called upon thus amount to 'speculative supply,' as described by CAISO."[10]

In this decision, the Commission seeks to clarify the RA import requirements, as set forth in D.04-10-035 and D.05-10-042. The Commission does not seek to delay clarification of the RA import requirements, or consider

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[6] *See, e.g.,* Cal Advocates Reply Comments at 3, PG&E Comments at 3, SCE Comments at 3.

[7] *See, e.g.*, AReM Comments at 8, CalCCA Comments at 2, Calpine Comments at 3, CLECA Comments at 3, SDG&E Comments at 4, Shell Reply Comments at 3.

[8] *See, e.g.,* CalCCA Comments at 3, SDG&E Comments at 3, Shell Reply Comments at 1.

[9] ACR at 4.

[10] *Id*. at 5.

alternative approaches to the import RA rules at this time, although future processes for considering such proposals are discussed below. For these reasons, we decline to address comments based on the above recommendations at this time.

3.1. Firm Energy Delivery

The first question posed in the ACR considers whether RA import contracts require actual delivery of firm energy, and whether a day-ahead bidding obligation alone should be sufficient to meet RA import rules.

Numerous parties respond that RA import contracts should not require actual delivery of firm energy, including AReM, BPA, Cal Advocates, Calpine, CAISO, CalCCA, MSCG, NRG, PG&E, PGP, Powerex, SDG&E, and Shell. Many of these parties generally contend that such a requirement will lead to inefficiencies in the market and increase costs for LSEs and customers. AReM states that this must-flow requirement "would essentially force all RA Imports to offer into the CAISO energy market as a price taker and incur losses when the prices outside of the CAISO are higher, leading to higher customer costs."[11] SDG&E argues that these contractual arrangements should be governed by the tariff and resolved between the commercial entities involved in the transaction.[12] The CAISO states that contracts should not require actual energy delivery absent a CAISO market award, as this would render imports to be a "must-take" resource that would reduce flexibility of resources needed for the grid.[13] The CAISO adds that if the Commission elects to treat RA imports as "must-take"

[11] AReM Comments at 6.

[12] SDG&E Comments at 9.

[13] CAISO Comments at 2.

resources, the resources should be accounted for in the maximum cumulative capacity (MCC) buckets and align with identified reliability needs.

By contrast, a few parties comment that RA import contracts should require actual delivery of firm energy, including IEP, Middle River, and SCE. IEP views RA imports without a firm energy delivery obligation as speculative supply.[14] Middle River states that there appears to be no compelling reason as to why RA imports should receive different treatment from the standards for meeting RA requirements.[15] SCE states that D.04-10-035 correctly identified the requirements for an import to count as RA and that the requirements were "sufficient to prevent the double counting of resources while allowing load-serving entities to engage in economic energy transaction that will reliable provide for energy and capacity to serve their load at that time."[16]

As stated in the ACR, the Commission finds that D.04-10-035 and D.05-10-042 established the requirements for import contracts to count as RA and finds insufficient record for modifying those requirements at this time. However, while we affirm the established import requirements, we recognize that it is necessary to clarify the requirements.

One of the goals of the RA program is to ensure that sufficient energy capacity flows into California when the system is peaking in order to maintain grid reliability. As such, it is reasonable that RA import contracts should be structured to require energy to flow during peak system periods. While RA import contracts should consist of energy flowing at all times covered by the contract, we find that "firm" energy should encompass energy delivery, at a

[14] IEP Comments at 3.

[15] MRP Reply Comments at 2.

[16] SCE Comments at 2.

minimum, during the Availability Assessment Hour (AAH) window (*e.g.*, 4:00 p.m. to 9:00 p.m.). Moreover, we clarify that "firm" energy does not mean energy that is available only when called upon in the CAISO's day-ahead or residual unit commitment.

Accordingly, the Commission affirms the requirements for RA import contracts established in D.04-10-035 and D.05-10-042 with the clarification that "firm" energy requires that energy delivery must flow, at a minimum, during the AAH window. Additionally, the Commission agrees with the CAISO that import RA resources should be accounted for in the MCC categories and align with identified reliability needs, and we adopt this requirement here.

We recognize that market inefficiencies may result from this type of firm energy requirement. For example, this may result in a potential self-scheduling of energy into the market at times of negative prices. However, requiring energy delivery during the AAH window, as opposed to a 24 x 7 bidding obligation, minimizes this concern in part because negative prices are unlikely to occur between 4:00 and 9:00 p.m. Further, LSEs rely on imports to a lesser degree in off-peak months, when negative prices are more likely to occur.

Lastly, the Commission acknowledges parties' broad range of responses to the questions raised in the ACR. At this time, we find insufficient record support to modify the requirements set forth in D.04-10-035 and D.05-10-042. However, the Commission will consider changes to and a deeper analysis of the current RA import rules in a future phase of the RA proceeding, including the ability for such resources to operate more flexibly in the CAISO market.

3.2. Firm Transmission Capacity

Another question posed in the ACR considers whether firm transmission capacity should be required in addition to firm energy. Several parties respond

that all RA contracts should be backed by firm transmission during the delivery period, including BPA, Calpine, CAISO, IEP, Middle River, NRG, Powerex, and SCE. Powerex states that not including this requirement risks multiple suppliers relying on the same transmission capacity to schedule energy to multiple Balancing Authority Areas (BAA).[17] Calpine contends that firm transmission should be required to provide import RA capacity but that the current rules are unclear as to when firm transmission should be secured.[18] SCE asserts that D.04-10-035 already imposes this requirement on LSEs.[19]

Other parties state that RA import contracts should not require firm transmission, including AReM, CalCCA, MSCG, PG&E, and SDG&E. MSCG states that firm transmission capacity should not be required, as this would limit the pool of suppliers to only those who hold firm transmission.[20] PG&E argues that such a requirement could lead to inefficiencies as the energy must self-schedule into the CAISO market and would be delivered to the CAISO regardless of cost.[21] A few parties, such as BPA, Cal Advocates, CLECA, CAISO, and PGP, support requiring suppliers of RA imports to report the BAA from which the import is sourced.

In considering parties' comments, the Commission finds that D.04-10-035 and D.05-10-042 sufficiently provide the rules requiring transmission capacity for RA import contracts. We do clarify that under the established requirements, the contracted energy product from the source balancing authority cannot be

[17] Powerex Comments at 13.

[18] Calpine Comments at 2.

[19] SCE Comments at 3.

[20] MSCG Comments at 6.

[21] PG&E Comments at 3.

curtailed for economic reasons or bumped by a higher priority claim to the transmission. Accordingly, we affirm the requirements adopted in D.04-10-035:

> Qualifying capacity for import contracts is the contract amount, provided the contract: (1) is an Import Energy Product with operating reserves, (2) cannot be curtailed for economic reasons, and (3a) is delivered on transmission that cannot be curtailed in operating hours for economic reasons or bumped by higher priority transmission or (3b) specifies firm delivery point (i.e., not seller's choice).

3.3. Compliance with Requirements for RA Import Contracts

In light of the clarification and affirmation of the RA import requirements in this decision, we consider how RA import contracts should be treated on a going forward basis. Many parties support grandfathering in existing contracts. However, we note that the requirements at issue date back to Commission decisions from 2004, and thus are not new requirements. Therefore, we find it unnecessary to grandfather existing contracts.

Many parties support the use of formal attestations or copies of contracts as sufficient documentation of compliance with the import requirements, including AReM, BPA, Cal Advocates, CalCCA, CAISO, Calpine, MSCG, NRG, PG&E, Powerex, and SCE. Most of these parties also support some level of review by the Commission's Energy Division to further ensure compliance, such as audits or review of attestations or contract language. The CAISO also recommends that Energy Division should compare the documentation provided with bidding behavior to verify compliance.[22]

The Commission agrees that in order to demonstrate compliance with the RA import requirements, LSEs subject to the RA program should provide

[22] CAISO Comments at 4.

documentation as part of its annual and monthly compliance filings, in the form of either contract language or an attestation from the contracting import provider. The Commission also agrees that it is reasonable for Energy Division staff to review each contract or attestation, as well as review whether these resources ultimately delivered energy to the CAISO, to verify compliance. Energy Division will use import bidding and scheduling data (based on data obtained from the CAISO) to verify monthly compliance. The Commission directs Energy Division to report on the annual aggregated bidding and scheduling data in its annual RA report. Accordingly, we adopt these requirements here.

In terms of a penalty structure, numerous parties state that the existing penalty structure provides sufficient deterrence, including CLECA, Cal Advocates, CalCCA, MSCG, NRG, PG&E, SCE, Shell and SDG&E. The Commission agrees that the existing RA penalty structure is sufficient to deter violations of the import rules and we decline to modify the penalty structure at this time. However, we note that should Energy Division determine, ex post, that an import contract does not meet the qualifying capacity requirements as affirmed in this decision and prior Commission decisions, Energy Division may refer this deficiency to the Commission's Consumer Protection and Enforcement Division.

4. Comments on Proposed Decision

The proposed decision of Administrative Law Judges (ALJs) Peter V. Allen and Debbie Chiv in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3. Filed comments on _____, and _____filed reply comments on _____..

5. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Peter V. Allen and Debbie Chiv are the assigned ALJs in this proceeding.

Findings of Fact

1. D.04-10-035 and D.05-10-042 established the requirements for import contracts to count as RA.

2. It is reasonable that RA import contracts should be structured to require energy to flow during peak system periods.

Conclusions of Law

1. The requirements for Resource Adequacy import contracts established in Decision 04-10-035 and Decision 05-10-042 should be affirmed.

2. "Firm" energy should encompass energy delivery that flows, at a minimum, during the Availability Assessment Hour window.

3. Import RA resources should be accounted for in the MCC categories and align with identified reliability needs.

4. To verify compliance, each LSE subject to the RA program should provide documentation as part of its annual and monthly compliance filings, in the form of either contract language or an attestation from the contracting import provider. Energy Division should obtain and review monthly bidding and scheduling data for these contracts from the CAISO.

O R D E R

IT IS ORDERED that:

1. The requirements for Resource Adequacy import contracts established in Decision 04-10-035 and Decision 05-10-042 are affirmed:

> Qualifying capacity for import contracts is the contract amount, provided the contract: (1) is an Import Energy Product with operating reserves, (2) cannot be curtailed for

economic reasons, and (3a) is delivered on transmission that cannot be curtailed in operating hours for economic reasons or bumped by higher priority transmission or (3b) specifies firm delivery point (*i.e.*, not seller's choice).

2. Firm energy requires that energy delivery flow, at a minimum, during the Availability Assessment Hour window.

3. Import Resource Adequacy resources shall be accounted for in the maximum cumulative capacity categories and shall align with identified reliability needs.

4. To verify compliance with the Resource Adequacy (RA) import requirements, each load-serving entity subject to the RA program shall provide documentation as part of its annual and monthly compliance filings, in the form of either contract language or an attestation from the contracting import provider. Energy Division shall review each contract or attestation to verify compliance, as well as review bidding and scheduling data obtained from the California Independent System Operator.

5. Energy Division shall report on the annual aggregated bidding and scheduling data in its annual Resource Adequacy report.

6. This proceeding remains open.

This order is effective today.

Dated _____, 2019, at San Francisco, California.