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**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

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER  
AND ADMINISTRATIVE LAW JUDGE**

**Summary**

This Scoping Memo and Ruling (Scoping Memo) sets forth the category, issues, need for hearing, schedule, and other matters necessary to scope this proceeding pursuant to Public Utilities Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure (Rules).<sup>1</sup>

**1. Background**

The Order Instituting Rulemaking (OIR) in this proceeding summarized the procedural and substantive background of this proceeding. The OIR discussed potential issues to be addressed in this proceeding, and provided for parties to file comments and reply comments on the scope, schedule and administration of the proceeding. Comments were received from Southern California Edison, Pacific Gas and Electric Company, and San Diego Gas & Electric Company (collectively as Joint Utilities); the Commission's Office of Ratepayer Advocates (ORA); the City of Lancaster, Marin Clean Energy,

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<sup>1</sup> California Code of Regulations, Title 20, Division 1, Chapter 1.

Peninsula Clean Energy Authority, Silicon Valley Clean Energy Authority, and Sonoma Clean Power Authority (collectively as CCA Parties); the California Independent System Operator (CAISO); Pacific Gas and Electric Company (PG&E); NRG Energy, Inc. (NRG); the Independent Energy Producers Association (IEP); Green Power Institute; Calpine Corporation (Calpine); the Center for Energy Efficiency and Renewable Technologies (CEERT); the California Efficiency + Demand Management Council; CPower, EnerNOC, Inc. and Energy Hub (collectively as the Joint Demand Response Parties); Cogentrix Energy Power Management LLC (Cogentrix); the Cogeneration Association of California; The Utility Reform Network (TURN); EDF Renewable Energy; the Alliance for Retail Energy Markets (AReM); the Western Power Trading Forum (WPTF); the California Energy Storage Alliance; Shell Energy North America (Shell); the Sierra Club; San Diego Gas & Electric Company (SDG&E); Diamond Generating Corporation; Middle River Power, LLC; and the California Large Energy Consumers Association (CLECA) on October 30, 2017. Reply comments were received from CEERT, PG&E, SDG&E, Cogentrix, Powerex Corp., Southern California Edison (SCE), TURN, Calpine, WPTF, AReM, NRG, CAISO, the California Wind Energy Association (CalWEA), IEP and CLECA on November 7, 2017. A prehearing conference (PHC) was held on December 4, 2017.

Energy Division held a workshop on October 23, 2017 on a number of issues, including the Path 26 requirement, defining dispatchability, and seasonal local requirements. A second workshop was held on November 7, 2017 on weather sensitive demand response, behind-the-meter resources and comments on the OIR.

## **2. Introduction**

In this scoping memo and ruling we: (1) outline the proceeding scope and schedule, (2) provide notice of forthcoming staff proposals, (3) solicit party comment on the issues, timeline, and forthcoming staff proposals, and (4) solicit party proposals for additional resource adequacy program changes to be considered for the 2019 compliance year. Comments are due by January 30, 2018, and proposals are due by February 16, 2018. The proposals and comments will be discussed at one or more Energy Division workshops to be held in February 2018.<sup>2</sup> Parties will have further opportunity to comment after the workshop(s).

For the 2019 and 2020 program years, we expect to continue to assess resource adequacy (RA) in support of its original reliability purpose. At the same time, in light of recent trends, the Commission sees a need to modify the construct so that it can continue to ensure ratepayer value and secure a generation fleet that meets California's needs. In particular, we encourage parties to keep in mind several general concepts and trends that may need to be considered across multiple aspects of this proceeding:

- Recent out-of-market procurement of resources for local reliability;
- Growth in Community Choice Aggregation; and
- Gas fleet transition considerations driven by the analysis conducted in the Commission's Integrated Resource Plan proceeding (Rulemaking 16-02-007), and by consideration of impacts on disadvantaged communities.
- More variable weather, and more weather-correlated generation

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<sup>2</sup> Additional workshops may be held, and may be noticed by Energy Division or by Ruling.

California faces some procurement challenges, such as the recent early retirements of several generators and inability of some load-serving entities (LSEs) to procure sufficient local resources for their 2018 year-ahead RA showings. To address these shortfalls, the CAISO has exercised its capacity procurement mechanism (CPM) for backstop procurement. In addition, multiple reliability-must-run (RMR) contracts, another form of backstop procurement, have been approved by the CAISO for 2018 (Metcalf, Yuba City, and Feather River)<sup>3</sup>.

Potential approaches to reduce future out-of-market RA procurement, such as a multi-year Local RA program and/or one or more central buyers (e.g., the large investor-owned utilities), will be prioritized for consideration in Track 1 of this proceeding. The Commission may also consider other ways to address this issue, such as increasing transparency (for the Commission and for procuring LSEs) regarding which resources are essential for local and sub-area reliability. This could involve additional CAISO studies, increased transparency of CAISO modeling inputs and assumptions, improved data sharing, or other approaches. With increased transparency, LSEs may be able to more accurately assess the value of competing RA resources, and the Commission may be better able to consider alternative solutions. While data confidentiality and time constraints may limit the degree of transparency that is achievable, we nevertheless hope to explore these concepts and increase transparency to the greatest extent possible.

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<sup>3</sup> See FERC Dockets ER18-230 (Gilroy Energy Center LLC) and ER18-240 (Metcalf Energy Center LLC). Gilroy Energy Center LLC includes the Feather River and Yuba City facilities.

### **3. Scope**

This proceeding is divided into three separate tracks. Based on the OIR, party comments and statements at the PHC, the scope of the proceeding is set forth below. This proceeding addresses safety issues by seeking to ensure reliable supplies of electricity.

#### **3.1. Track 1**

Track 1 of this proceeding encompasses the Commission's consideration of system, local and flexible capacity requirements for the next year, as well as time-sensitive refinements to the Commission's RA program. Track 1 is expected to be concluded by the end of June 2018. The issues within the scope of Track 1 are as follows:

1. Adopting the 2019 Local Capacity Requirements (LCR) – In recent years, the California Independent System Operator (CAISO) has performed an annual LCR study. This study is submitted to the Commission in the RA proceeding, and is used to adopt Local RA procurement requirements for the next year (for this Track of the proceeding, starting in 2019). The draft CAISO LCR study will be submitted to the Commission on approximately March 9, 2018 and the final LCR study on approximately April 27, 2018. Parties will have the opportunity to comment on the draft and final LCR studies. The schedule anticipates that the Commission will issue a decision by the end of June 2018 so that jurisdictional load-serving entities (LSEs) can have sufficient time to obtain the resources to meet their Local RA procurement requirements for 2019.
2. Adopting the 2019 Flexible Capacity Requirements (FCR) – Similar to the LCR process, the CAISO also performs an annual FCR study, which is used to adopt Flexible RA requirements for the following year. The FCR study will be submitted into the RA proceeding by April 27, 2018, at which time parties will have the opportunity to comment on the study. The adopted schedule anticipates that the

- Commission will issue a decision by the end of June 2018 so that jurisdictional load-serving entities (LSEs) can have sufficient time to obtain the resources to meet their Flexible RA procurement requirements for 2019.
- a. The CAISO is currently considering revisions to its Flexible RA Capacity Must-Offer Obligations (FRACMOO 2 initiative). Depending on the timing of this initiative, the Commission may consider revisions to our Flexible RA rules in either Track 1 or Track 2 to address ramping over shorter intervals, and to better allow for participation of renewables and out-of-state resources, such as hydropower resources in Oregon and Washington that could be dispatched to help meet flexibility needs. If CAISO timing does not permit sufficient review by parties and the Commission prior to a June 2018 decision, such revisions may be considered in Track 2 instead of Track 1.
3. Adopting the 2019 System RA Requirements – In past years, the CPUC has imposed a system requirement based on the California Energy Commission (CEC) 1-in-2 monthly load forecast, plus a 15% planning reserve margin. Absent any alternative proposals, this framework is expected to continue for the 2019 RA program year.
  4. Top Priority Modifications to the Resource Adequacy Program – The following issues related to modifications to the RA program will be within the scope of Track 1 of this proceeding:
    - a. If necessary, whether participation in the year-ahead RA showing should be required in order for an LSE to serve load in the following year, and other resource adequacy and potential cost allocation issues that arise as a result of load migration;
    - b. RA program reforms necessary to maintain reliability while reducing potentially costly backstop procurement. These may be addressed via staff and party proposals, and may include central buyers, a multi-year procurement framework for Local RA (and

associated cost allocation), as well as other proposals to address out-of-market procurement and increase transparency;

- c. Any necessary updates to Effective Load Carrying Capacity (ELCC)<sup>4</sup> modeling methodology and consideration of results;
- d. Alignment of resource adequacy measurement hours with CAISO availability assessment hours; and
- e. Any other time-sensitive issue identified by Energy Division or by parties in proposals submitted by February 16, 2018.

### 3.2. Track 2

Track 2 of this proceeding encompasses more complex and slightly less time-sensitive modifications and refinements to the Commission's RA program. Track 2 is expected to be concluded by the end of 2018. The issues within the scope of Track 2 are as follows:

1. Adopting Multi-Year Local RA Requirements (only if a framework is adopted in Track 1) - While we plan to consider a multi-year procurement framework for Local RA in Track 1, consideration of specific program rules and requirements would likely be overly ambitious. Therefore, if the June 2018 decision adopts a multi-year procurement framework, we expect to defer detailed implementation requirements to a Track 2 decision.
2. Refinements to Local Area Rules - The Commission may consider the following further refinements to the Local RA program in Track 2, as time permits:

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<sup>4</sup> The term Effective Load Carrying *Capacity* as used in this proceeding is also commonly referred to as Effective Load Carrying *Capability*. For purposes of this proceeding, these terms should be considered synonymous.

- a. Adjusted or waived LSE procurement obligations for certain local areas with resource deficiencies or near-term procurement difficulties;
  - b. Modified treatment of specific local areas or sub-areas (such as San Diego), and associated cost allocation;
  - c. Seasonally varying Local Capacity Requirements;
  - d. Local penalty waiver requirements; and
  - e. Increased transparency for the Commission, and for LSEs procuring RA, regarding which resources are essential for local and sub-area reliability. This transparency may also enable more targeted consideration of potential alternatives to highly polluting plants located in disadvantaged communities.
3. Further Refinements to the RA Program - If not already addressed in Track 1, in Track 2 we may consider Flexible RA rule revisions to address ramping over shorter intervals and better allow for participation of renewables and out-of-state resources such as hydropower in Washington and Oregon. If not addressed elsewhere, we may consider allocation of backstop procurement costs across CPUC-jurisdictional LSEs, to account for intra-year load migration. We may also consider refinements to production cost modeling algorithms and further integration of modeling-based concepts into RA program rules and other RA waiver and penalty rules. Other issues identified by Energy Division or by parties in proposals submitted by June 6, 2018 may also be considered.

### **3.3. Track 3**

Track 3 of this proceeding will consider the 2020 program year requirements for System, Local, and Flexible RA. Additionally, the Commission may revisit RA counting rules for weather-sensitive and local demand response resources. Other modifications and refinements to the Commission's RA



program, as identified in proposals by Energy Division or by parties may also be considered. The schedule for Track 3 will be established in a later scoping memo, but Track 3 is expected to be concluded by June 2019.

**4. Categorization**

In the OIR opening this proceeding, the Commission preliminarily determined that the category of the proceeding is ratesetting. This Scoping Memo confirms the categorization. Anyone who disagrees with this categorization must file an appeal of the categorization no later than ten days after the date of this scoping ruling. (*See* Rule 7.6.)

**5. Need for Hearing**

In the OIR opening this proceeding, the Commission preliminarily determined that hearings are required. This Scoping Memo confirms that determination, with the caveat that hearings may not be required in all three Tracks.

**6. Ex Parte Communications**

In a ratesetting proceeding such as this one, *ex parte* communications with the assigned Commissioner, other Commissioners, their advisors and the ALJ are only permitted as described at Public Utilities Code Section 1701.3(h) and Article 8 of the Rules.<sup>5</sup>

**7. Assigned Commissioner and Presiding Officer**

Liane M. Randolph is the assigned Commissioner and Peter V. Allen is the assigned Administrative Law Judge (ALJ). Pursuant to Public Utilities Code

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<sup>5</sup> Interested persons are advised that, to the extent that the requirements of Rule 8.1 et seq. deviate from Public Utilities Code sections 1701.1 and 1701.3 as amended by Senate Bill 215, effective January 1, 2017, the statutory provisions govern.

Section 1701.3(b) and Rule 13.2(b), ALJ Peter V. Allen is designated as the Presiding Officer.

## **8. Filing, Service and Service List**

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocols set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail whenever possible, transmitted no later than 5:00 p.m. on the date scheduled for service to occur. Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents. In this proceeding, parties are directed to serve documents to the assigned ALJ and assigned Commissioner in electronic format only. Parties are directed not to serve a paper copy on the assigned ALJ or on the assigned Commissioner. This is a modification of Rule 1.10.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

The Commission now has a system for the electronic submission of supporting documents, such as testimony and workpapers that are not formally filed. The instructions for submission of supporting documents are attached as Appendix A to this Scoping Memo and Ruling.

**9. Discovery**

Discovery may be conducted by the parties consistent with Article 10 of the Commission's Rules. Any party issuing or responding to a discovery request shall serve a copy of the request or response simultaneously on all parties.

Electronic service under Rule 1.10 is sufficient, except Rule 1.10(e) does not apply to the service of discovery and discovery shall not be served on the Administrative Law Judge. Deadlines for responses may be determined by the parties. Motions to compel or limit discovery shall comply with Rule 11.3.

**10. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao> or contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

**11. Schedule**

The below schedule is established for Tracks 1 and 2, subject to modification by the assigned Commissioner or ALJ. LCR and FCR issues are shown in a separate table for clarity, but will be addressed with other Track 1 issues. All Track 1 and Track 2 dates are in 2018.

**Track 1 Calendar - Excluding LCR and FCR Issues**

<b>Event</b>	<b>Date</b>
Energy Division proposal(s) served <sup>6</sup>	Mid-January
Comments on this Ruling	January 30, 2018
Track 1 proposals filed	February 16, 2018
Workshop on Energy Division and party proposals	February 22-23, 2018
Comments filed on the workshop and on all proposals	March 7, 2018
Reply comments on the workshop and all proposals	March 16, 2018
Proposed Decision re Track 1	May 2018
Final Decision re Track 1	June 2018

**Track 1 Calendar - LCR and FCR Issues**

<b>Event</b>	<b>Date*</b>
CAISO files draft 2019 LCR Report	March 9, 2018
Comments on draft 2019 LCR Report	March 23, 2018
CAISO files final 2019 LCR and FCR Reports	April 27, 2018
Comments on CAISO final 2019 LCR and FCR Reports	May 4, 2018
Reply Comments on CAISO 2019 LCR and FCR Reports	May 11, 2018

*\*Dates in this table are subject to change dependent upon CAISO processes.*

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<sup>6</sup> Comments on Energy Division proposals will be served but not filed. A separate ruling will set forth the applicable process.

**Track 2 Calendar**

<b>Event</b>	<b>Date</b>
Concurrent testimony (including party proposals) on Track 2 issues	June 6,2018
Possible Energy Division proposals on Track 2 issues	July 10, 2018
Workshop on Track 2 testimony and proposals	Mid-July 2018
Responsive testimony on Track 2 issues	August 8, 2018
Evidentiary Hearings on Track 2 issues	Late August
Opening Briefs	September 19, 2018
Reply Briefs	October 5 2018
Proposed Decision	Q4 2018

The assigned Commissioner or assigned ALJ may modify this schedule as necessary to promote the efficient management and fair resolution of this proceeding. Track 3 will be scheduled at a later time. Due to the complexity and number of issues in this proceeding, it is the Commission's intent to complete this proceeding within 24 months from the date this proceeding was initiated. This deadline may be extended by order of the Commission. (Public Utilities Code Section 1701.5(b).)

If there are any workshops in this proceeding, notice of such workshops will be posted on the Commission's Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

A decision-maker or advisor may be present at a CAISO meeting on January 30, 2018. The CAISO notice of the meeting is available at: [http://www.caiso.com/Documents/NewInitiativeReview-ReliabilityMust-Run\\_CapacityProcurementMechanismMeeting013018.html](http://www.caiso.com/Documents/NewInitiativeReview-ReliabilityMust-Run_CapacityProcurementMechanismMeeting013018.html).

## **12. Settlement and Alternative Dispute Resolution**

While the schedule does not include specific dates for settlement conferences it does not preclude parties from meeting at other times provided notice is given consistent with our Rules.

The Commission offers Alternative Dispute Resolution (ADR) services consisting of mediation, facilitation, or early neutral evaluation. Use of ADR services is voluntary, confidential, and at no cost to the parties. Trained ALJs serve as neutrals. The parties are encouraged to visit the Commission's ADR webpage at <http://www.cpuc.ca.gov/adr/>, for more information.

If requested, the assigned ALJ will refer this proceeding, or a portion of it, to the Commission's ADR Coordinator. Alternatively, the parties may contact the ADR Coordinator directly at [adr\\_program@cpuc.ca.gov](mailto:adr_program@cpuc.ca.gov). The parties will be notified as soon as a neutral has been assigned; thereafter, the neutral will contact the parties to make pertinent scheduling and process arrangements. Alternatively, and at their own expense, the parties may agree to use outside ADR services.

## **13. Outreach Pursuant to Public Utilities Code Section 1711(a)**

Public Utilities Code Section 1711(a) states:

Where feasible and appropriate, except for adjudication cases, before determining the scope of the proceeding, the commission shall seek the participation of those who are likely to be affected, including those who are likely to benefit from, and those who are potentially subject to, a decision in that proceeding. The commission shall demonstrate its efforts to comply with this section in the text of the initial scoping memo of the proceeding.

The Commission's Outreach Office conducted outreach pursuant to Public Utilities Code Section 1711(a) by including information about the proceeding in the Outreach Office's newsletter, which is distributed statewide.

**IT IS RULED** that:

1. The category of this proceeding is ratesetting. Appeals as to category, if any, must be filed and served within ten days from the date of this Scoping Memo.
2. ALJ Peter V. Allen is designated as the Presiding Officer.
3. The scope of the issues for this proceeding is as stated in "Section 3. Scope" of this ruling.
4. Hearings are necessary.
5. The schedule for the proceeding is set in "Section 11. Schedule" of this ruling. The assigned Commissioner or Administrative Law Judge may adjust this schedule as necessary for efficient management and fair resolution of this proceeding.
6. With limited exceptions that are subject to reporting requirements, *ex parte* communications are prohibited. (*See* Public Utilities Code Section 1701.3(h); Article 8 of the Commission's Rules of Practice and Procedure.)
7. Parties shall submit all testimony and workpapers to supporting documents as described in Appendix A.

Dated January 18, 2018, at San Francisco, California.

/s/ LIANE M. RANDOLPH  
Liane M. Randolph  
Assigned Commissioner

/s/ PETER V. ALLEN  
Peter V. Allen  
Administrative Law Judge

## APPENDIX A

### Electronic Submission and Format of Supporting Documents

The Commission's web site now allows electronic submittal of supporting documents (such as testimony and work papers).

Parties shall submit their testimony or workpapers in this proceeding through the Commission's electronic filing system.<sup>1</sup> Parties must adhere to the following:

- The Instructions for Using the "Supporting Documents" Feature, (<http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=158653546>) and
- The Naming Convention for Electronic Submission of Supporting Documents (<http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=100902765>).
- The Supporting Document feature does not change or replace the Commission's Rules of Practice and Procedure. Parties must continue to adhere to all rules and guidelines in the Commission's Rules of Practice and Procedures including but not limited to rules for participating in a formal proceeding, filing and serving formal documents and rules for written and oral communications with

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<sup>1</sup> These instructions are for submitting supporting documents such as testimony and work papers in formal proceedings through the Commission's electronic filing system. Parties must follow all other rules regarding serving testimony.

Any document that needs to be formally filed such as motions, briefs, comments, etc., should be submitted using Tabs 1 through 4 in the electronic filing screen.



Commissioners and advisors (*i.e.* “*ex parte* communications”) or other matters related to a proceeding.

- The Supporting Document feature is intended to be solely for the purpose of parties submitting electronic public copies of testimony, work papers and workshop reports (unless instructed otherwise by the Administrative Law Judge), and does not replace the requirement to serve documents to other parties in a proceeding.
- Unauthorized or improper use of the Supporting Document feature will result in the removal of the submitted document by the CPUC.
- Supporting Documents should not be construed as the formal files of the proceeding. The documents submitted through the Supporting Document feature are for information only and are not part of the formal file (*i.e.* “record”) unless accepted into the record by the Administrative Law Judge.

All documents submitted through the “Supporting Documents” Feature shall be in PDF/A format. The reasons for requiring PDF/A format are:

- Security - PDF/A prohibits the use of programming or links to external executable files. Therefore, it does not allow malicious codes in the document.
- Retention - The Commission is required by [Resolution](#) L-204, dated September 20, 1978, to retain documents in formal proceedings for 30 years. PDF/A is an independent standard and the Commission staff anticipates that programs will remain available in 30 years to read PDF/A.

- Accessibility – PDF/A requires text behind the PDF graphics so the files can be read by devices designed for those with limited sight. PDF/A is also searchable.

Until further notice, the “Supporting Documents” do not appear on the “Docket Card”. In order to find the supporting documents that are submitted electronically, go to:

- Online documents, choose: “[E-filed Documents](#)”,
- Select “Supporting Document” as the document type, ( do not choose testimony)
- Type in the proceeding number and hit search.

Please refer all technical questions regarding submitting supporting documents to:

- Kale Williams ([kale.williams@cpuc.ca.gov](mailto:kale.williams@cpuc.ca.gov)) 415 703- 3251 and
- Ryan Cayabyab ([ryan.cayabyab@cpuc.ca.gov](mailto:ryan.cayabyab@cpuc.ca.gov)) 415 703-5999

**(END OF APPENDIX A)**