BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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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 CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES ON THE PROPOSED SETTLEMENT AGREEMENT FOR A "RESIDUAL" CENTRAL PROCUREMENT ENTITY STRUCTURE FOR RESOURCE ADEQUACY

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For: CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES

September 30, 2019

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The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Comments on the Proposed Settlement Agreement for a "Residual" Central Procurement Entity Structure for Resource Adequacy (Settlement Agreement) in Rulemaking (R.) 17-09-020 (Resource Adequacy (RA)). On August 30, 2019, California Community Choice Association, Calpine Corporation, Independent Energy Producers Association, Middle River Power, NRG Energy, Inc., San Diego Gas & Electric Company, Shell Energy America (US) L.P., and the Western Power Trading Forum (together, the Settling Parties) submitted a Joint Motion for Adoption of the Settlement Agreement. These Comments are filed and served pursuant to the Commission's Rules of Practice and Procedure, Rule 12.2.

I.
OVERVIEW

Commission Rules of Practice and Procedure, Rule 12.2 states that comments "must specify the portions of the settlement that the party opposes, the legal basis of its opposition, and the factual issues that it contests." The Commission should reject or modify the Settlement Agreement as submitted. CEERT, along with numerous other stakeholders in this proceeding, are not parties to the Settlement Agreement that is therefore, not a Settlement Agreement representing the broad range of views on the contested issues. This Settlement Agreement is wholly

incomplete. It is essentially an agreement between two sets of parties, each of which has a single issue they deem critical regarding the RA program, to support each other's position. The settled issues bear little relationship to each other and do not address the truly critical issue before the Commission at this point in time – the immediate need for procurement of new RA resources.

The Community Choice Aggregators (CCAs), quite understandably given their circumstances, strongly desire that any central buyer construct be "residual" in nature where they have the opportunity to self procure their RA obligation before the central buyer can step in and procure on their behalf. Independent Energy Producers Association, for its part, representing the vast majority of current RA resources, quite understandably wants to extend the term of the procurement obligation to increase the value of its near monopoly supply position and postpone the inevitable sunset of the current reliance on roughly 35,000 megawatts of existing gas resources.

The Commission has failed to act on making non-fossil alternatives, such as demand response (DR) lubricated with storage, hybrid solar/storage resources both aggregated behind-the-meter (BTM) and in-front-of-the-meter (IFOM), and energy efficiency count for RA purposes. Therefore, it is premature to force load-serving entities (LSEs) to make multi-year showings for system and flexible RA since that will only result in cementing in market power of existing fossil resource for the multi-year period.

The Commission must act to ensure that the out-of-cycle integrated resource plan (IRP) procurement of 2,500 MW of system RA to be all or mostly all new non-fossil fuel resources as a predicate for the Settlement Agreement. There should not be a central buyer nor fossil contracting until the Commission does its job. If there is a shortage of RA, then the California Independent System Operator (CAISO) can do backstop procurement that will minimize the time and quantity of existing non-competitive old fossil. If that means extending the once-through cooling (OTC)

deadlines or fines, then the CAISO can request that the State Water Resources Control Board (SWCRB) oversee that, but the Commission should not compound its failure to deal with the tens of thousands of MWs of preferred resources in development that provide capacity value but have no way to count for RA.

Instead of adopting the Settlement Agreement, the Commission should adopt both Southern California Edison's (SCE's) and CAISO's proposals for "interim" counting rules, hold the solicitation under those rules and gain operational experience with these resources before adopting multi-year requirements.

II.
THERE ARE CONTESTED FACTUAL ISSUES IN THE SETTLEMENT AGREEMENT

In D.18-06-030, the Decision Adopting Local Capacity Obligations for 2019 and Refining the Resource Adequacy Program, the Commission declined to adopt the contested recommendation of the Independent Energy Producers Association, one of the principal settling parties, for a multi-year requirement for system and flexible RA citing the lack of a record for either the need or efficacy of such a change in policy.[1]

Nothing has changed since that decision that affects this conclusion and specifically, in D.19-02-022, the Decision Refining the Resource Adequacy Program, the Commission finds that expansion of the multi-year framework "to flexible and system is premature and needs to be fully explored."[2] Furthermore, nothing in the Settlement Agreement addresses this contested factual issue.

[1] D.18-06-030, at pp. 24-28.
[2] D.19-02-022, at p. 33.

III.
THE SETTLEMENT AGREEMENT IS NOT REASONABLE IN LIGHT OF THE WHOLE RECORD, IS NOT CONSISTENT WITH THE LAW AND IS NOT IN THE PUBLIC INTEREST

Commission Rules of Practice and Procedure, Rule 12.1(d) states that "[t]he Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest." The Settlement Agreement is intended to set the terms and conditions for the next cycle RA procurement. That procurement is most likely to include the result of the Proposed Decision in the procurement track of the IRP docket, issued in R.16-02-007 on September 12, 2019. If the Settlement is adopted as is, the result is virtually guaranteed to be simply raising the RA price of existing gas fired generation and unnecessarily extending and expanding extension of the operating permits for retiring Once Through Cooling (OTC) plants set to expire in December 2020 without facilitating construction or deployment of ANY new RA resource.

Thus, grid reliability will not be materially improved, and ratepayer costs will increase without any ratepayer benefit. Unless and until counting rules are in place that ensure new hybrid non fossil preferred resources already in the CAISO interconnection queue or aggregated BTM hybrids already in development, no new resources will be eligible for that procurement and the public interest will not be served. The Settlement Agreement fails to meet the Commission Rules of Practice and Procedure criteria for adoption.

IV.
A HEARING ON THE SETTLEMENT AGREEMENT IS REQUIRED BY LAW

Due to the legal and factual issues within the Settlement Agreement, a hearing is required by law pursuant to Commission Rules of Practice and Procedure, Rule 12.2 before the Settlement Agreement can be adopted.

V.
CONCLUSION

For the reasons detailed above, CEERT recommends that the Commission not adopt the Settlement Agreement as proposed. If, for some reason there remains interest in adopting the contested Settlement Agreement, then Commission rules demand that hearings be held to resolve those issues before adoption.

Respectfully submitted,

September 30, 2019

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