

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



**FILED**

09/22/20  
04:59 PM

Appeal of Clean Power Alliance of  
Southern California from Citation No. E-  
4195-82 issued on April 15, 2020 by  
Consumer Protection and Enforcement  
Division.

K. 20-05-006

**JOINT PARTIES' REPORT**

Catherine Rucker  
Consumer Protection and Enforcement  
Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Tel. (415) 703-1755  
Email: Catherine.rucker@cpuc.ca.gov

Attorney for Consumer Protection and  
Enforcement Division

Patrick Ferguson  
Davis Wright Tremaine LLP  
505 Montgomery Street, Suite 800  
San Francisco, CA 94111  
Tel. (415) 276-6500  
Email: patrickferguson@dwt.com

Attorney for Clean Power Alliance of  
Southern California

Nancy S. Whang, Esq.  
General Counsel  
Clean Power Alliance of Southern California  
555 W. 5<sup>th</sup> St., 35<sup>th</sup> Floor  
Los Angeles, CA 90013  
Tel. (213) 595-7818  
Email: nwhang@cleanpoweralliance.org

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

Appeal of Clean Power Alliance of  
Southern California from Citation No. E-  
4195-82 issued on April 15, 2020 by  
Consumer Protection and Enforcement  
Division.

K. 20-05-006

**JOINT PARTIES' REPORT**

Pursuant to the September 14, 2020 *Administrative Law Judge E-Mail Ruling Setting Status Conference* (“September 14 Ruling”), the Clean Power Alliance of Southern California (“CPA”) and the Consumer Protection and Enforcement Division (“CPED”) (collectively, the “Joint Parties”) hereby submit the following report.

On May 14, 2020, CPED filed the *Notice of Appeal of Clean Power Alliance of Southern California for Citation E-4195-82* (“CPA Appeal”). On May 26, CPED filed the *Compliance Filing of the Consumer Protection and Enforcement Division for Citation No. E-4195-82 in Accordance with ALJ-299* (“CPED Compliance Filing”). On September 14, Administrative Law Judge Yacknin issued an email ruling setting forth a number of items on which the Joint Parties were required to meet and confer. On September 18, the Joint Parties met by videoconference to meet and confer with respect to the issues set forth in the September 14 Ruling.

Based on the Joint Parties’ meet and confer, Section I below presents a list of facts that the Joint Parties agree are undisputed. Section II responds to the four specific questions set forth in the September 14 Ruling.

## **I. Statement of Undisputed Facts**

The Joint Parties agree that the following facts are not in dispute:

1. The process and timing for CPA to submit its 2020 Year Ahead Resource Adequacy (“RA”) filing with the Commission is set forth in the *2020 Filing Guide for System, Local and Flexible Resource Adequacy (RA Compliance Filings, R. 17-09-020* (“CPUC RA Guide”).<sup>1</sup>
2. On September 20, 2019, Energy Division (“ED”) staff provided CPA with its 2020 Year Ahead RA allocations.
3. On October 31, CPA filed its Year Ahead RA showing for 2020 (“Year Ahead Showing”). The Year Ahead Showing was timely submitted pursuant to the CPUC RA Guide. The Year Ahead Showing shows that CPA had exceeded its System RA obligations for 2020.
4. In the Year Ahead Showing, CPA listed the wrong RA values for the Demand Response resources (“DR Values”) that it showed for System RA compliance. Attachment 2 to the CPED Compliance Filing is the March 6, 2020 deficiency notice that ED staff send to CPA (“March 6 Deficiency Notice”) which describes the error as follows:

“CPASoCal’s deficiency is calculated based on the [Net Qualifying Capacity] NQC value of the third-party DR resources, after which [Transmission & Distribution] T&D line losses and the 15% [Planning Reserve Margin] PRM are applied. It appears that instead of entering the NQC values for these resources in its Year Ahead filing templates, CPASoCal entered QC values that had the T&D line losses and PRM already embedded, and the template then applied the PRM a second time. This overstated the amount of capacity available from these resources. CPASoCal must report on only the approved NQC values for these resources; Energy Division will incorporate T&D line losses (and the PRM ) on the back end.”

---

<sup>1</sup> <https://www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=6442465647>

5. The March 6 Deficiency Notice accurately identifies the months, amounts (in MWs), and resources in the CPA Year Ahead Showing which were affected by CPA's error with respect to the DR Values.

6. On November 21, CPA filed a revised version of the Year Ahead Showing to correct an error in the Resource ID for one of the shown RA resources. This correction did not affect CPA's compliance and is not at issue in this proceeding. In the November 21 revision of the Year Ahead Showing, CPA still exceeded its system RA obligations for 2020.

7. CPA also was required to file a report with the California Independent System Operator ("CAISO") on a year ahead basis ("CAISO Year Ahead Filing") which identified: (a) all of the RA resources that CPA would use for 2020 RA compliance, (b) the total RA capacity (in MWs) of each resource, and (c) the months during 2020 in which the resource would be used to meet CPA's RA compliance obligations. The deadline for the 2020 compliance year was December 13, 2019.

8. On November 20, CPA directed its agent to submit the CAISO Year Ahead Filing via the CAISO's Interface for Resource Adequacy ("CIRA") application. CPA represents that all of the resources listed in the Year Ahead Showing with the CPUC were also listed in the CAISO Year Ahead Filing. CPA represents that it has never made any changes to the CAISO Year Ahead Filing at any time after it was originally submitted on November 20th.

9. CPA represents that on December 15, the CAISO performed a validation of all the resources listed in the CAISO Year Ahead Filing. CPA represents that the entire amount of capacity (in MWs) for every RA resource that was ultimately listed in the March Revision

(defined below) to its Year Ahead Showing was reviewed and validated by the CAISO on December 15.

10. CPED represents that on January 6, 2020, ED performed an internal validation with respect to the Year Ahead Showing.

11. On January 16, CPA emailed ED staff to seek permission to revise the Year Ahead Showing. Because CPA had exceeded its system RA obligations for 2020, CPA wished to reduce the amount of RA capacity for certain shown resources so that CPA would be exactly 100% compliant with its 2020 System RA obligations and the excess resources could be used for intra-month substitution or potentially re-sold to other LSEs.

12. On January 16, CPA represents that it had a telephone conference with ED staff in which CPA explained that it was no longer possible for CPA to make changes to its CAISO Year Ahead Filing, because the CAISO had already performed a validation of the CAISO Year Ahead Filing in December 2019. The deadline for submitting RA filings for the 2020 compliance year to the CAISO was December 13, 2019.

13. On January 21, 2020, ED sent an email to all load serving entities (“LSEs”) which provided all LSEs (including CPA) with a final opportunity to revise their Year Ahead Showings for 2020. ED staff provided LSEs with the opportunity to revise their Year Ahead Showing even though CPA had previously informed ED staff in the January 16 telephone call that changes could no longer be made to the CAISO Year Ahead Filing.

14. On January 24, CPA filed a revision to its Year Ahead Showing (“January Revision”). The January Revision shows that CPA met 100% of its system RA obligations for 2020, however the incorrect DR Values used in the Year Ahead Showing were carried over into

this January Revision. CPA did not refile their RA filings to the CAISO because the deadline for the 2020 compliance year (December 13, 2019) to the CAISO had already passed.

15. After CPA submitted its January Revision, ED performed another internal validation with respect to the Year Ahead Showing. ED staff discovered that once the correct DR Values were inputted, CPA's January filing showed a deficiency of several MWs of system RA capacity in the months of May, July, August, and September 2020.

16. On March 6, ED issued a deficiency notice to CPA, which noted that the RA value for the DR Resources were higher than the RA value on the CAISO's NQC list.<sup>2</sup> ED required that CPA identify certain additional amounts of system RA for the months of May, July, August and September 2020. The need for CPA to identify additional system RA resources in these four months was solely attributable to the shortfall created when the DR Values were corrected.

17. On March 11, CPA filed another revision to its Year Ahead Showing ("March Revision"). To correct for the error with respect to the DR Values, CPA increased the amount of MWs shown for several of the system RA resources that were listed in its Year Ahead Showing. Attachment 3 to the CPED Compliance Filing details the MW differences between resources listed in the January Revision and the March Revision.

18. For each of the system RA resources for which additional MWs were listed in the March Revision, CPA represents that:

- a. CPA had previously identified each of these resources in its Year Ahead Showing;

---

<sup>2</sup> The March 2 Deficiency Notice is Attachment 2 to the CPED Compliance Filing.

- b. CPA had previously committed each of these resources to the CAISO in its CAISO Year Ahead Filing, in an amount (in MWs) that was equal to or greater than the amount of capacity identified in the March Revision;
- c. CPA had each of the resources under contract prior to filing its Year Ahead Showing on October 31, 2019, in an amount (in MWs) that was equal to or greater than the amount of capacity identified in the March Revision;
- d. CPA did not engage in any additional procurement in connection with the March Revision.
- e. CPA did not make any changes to its resource commitments to the CAISO in connection with the March Revision.

19. On April 15, CPED issued citation E-4195-82 to CPA. CPED asserts that applying the correct DR Values to the January Revision resulted in a System RA deficiency in CPA's Year Ahead Showing, and that CPA corrected this deficiency in the March Revision by increasing the amount of MWs shown for several of the system RA resources.

20. The RA Guide sets forth two classes of errors that may occur with respect to LSEs' RA compliance filings:

- a. **Minor Typographical and Numerical Errors:** "Simple typographical or numerical errors that do not affect compliance or do not invalidate resources sufficient to drop the LSE below RAR can be corrected by the LSE by submitting a corrected template to replace the original in its entirety; specific revisions must be noted in a cover letter. In the case of a supply plan mismatch or a scheduled outage that invalidates a portion of the LSE's

capacity, if the supplier has submitted replacement capacity via a supply plan as of the RA Filing due date, the LSE may submit corrections to list the correct source of capacity via correction sheets.” (RA Guide at 44)

- b. **Substantive Errors that May Affect Compliance:** “Errors that are substantive and affect compliance, when removal of the capacity in question would leave the LSE without sufficient capacity committed to the CAISO (even in the event that the LSE otherwise controls the capacity but did not make it available to the CAISO via a RA Filing) to meet RAR. Substantive errors must be corrected via a complete refilling of the RA Filing (with cover letter that explains the errors and a new certification sheet). Additional procurement (even if the LSE already controls the capacity but not has made it available to CAISO via an RA filing) must be demonstrated via a corrected template and the LSE is to ensure that a revised supply plan documenting that additional procurement is filed with the CAISO by the supplier. Procurement deficiencies occur when LSEs do not make sufficient RA capacity available to the CAISO via an RA Filing or supply plan confirmation by the RA Filing due date.” (RA Guide at 44).

21. The RA Guide states that an “LSE may be subject to enforcement action for substantive errors.” (RA Guide at 39).

22. CPED has not received any case referrals from ED involving an LSE for making a Minor Typographical or Numerical Error with respect to its Year Ahead RA compliance filing.



23. The Joint Parties are not aware of any prior instance in which CPED received a case referral from ED involving a similar situation to this one, involving CPA.

24. No major changes involving DR resources were made to the 2020 Filing Guide for System, Local, and Flexible RA Compliance Filing.

## **II. Response to the Questions Set Forth in the September 14 Ruling**

### **A. Facts from the CPED Compliance Filing that Are in Dispute**

None of the facts set forth in the CPED Compliance Filing are disputed. However, the Joint Parties disagree with respect to the legal and compliance impact of these facts.

CPED asserts that ED relies on information from LSE's RA filings and its internal validation to determine compliance with Year Ahead obligations. CPA lowered the MW values for some resources in connection with its January Revision as compared to its October and November filings. Once the DR values were corrected, CPA's January Year Ahead Showing demonstrated less than 100% compliance for System RA. CPED asserts that this constitutes a Substantive Error that May Affect Compliance as defined in the RA guide, for which specified penalties are required pursuant to Resolution E-4195. In response to ED's March 2 Deficiency Notice, CPA submitted its March Revision by increasing the amount of MWs shown for several of the system RA resources.

CPA disputes the assertion that it substituted resources within its control in connection with the March Revision. CPA has always been in 100% compliance with its system RA obligations for 2020. CPA's numerical error with respect to the DR Values used in its Year Ahead Showing is most appropriately considered a "Minor Error" under the RA Guide because it did not affect compliance, did not leave CPA without sufficient capacity committed to the

CAISO, and did not require any additional procurement to correct. CPA asserts that ED's referral of the error for enforcement by CPED and CPED's issuance of the Citation was contrary to Commission policy, unprecedented, and does not serve the public interest.

**B. Facts from the CPA Appeal that Are in Dispute**

None of the facts set forth in the CPA Appeal are disputed. However, as described above, the Joint Parties disagree with respect to the legal and compliance impact of these facts.

**C. Additional Facts that CPA is Prepared to Present at Hearing that Are in Dispute**

During the meet and confer on September 18, the Joint Parties discussed a number of additional facts that CPA believes merit dismissal of the citation, specifically Facts # [7, 8 and 16] set forth in Section I above. While CPED does not have any reason to doubt the validity of these factual representations, CPA is prepared to submit written evidence in support of each fact. CPA could also present witness testimony in support of these facts, to the extent that a hearing is determined to be required.

**D. Technical Resources and Other Relevant Factors**

The Joint Parties do not believe that a hearing is required because there are no factual issues in dispute. However, to the extent a hearing is needed, the Joint Parties do not have any technological constraints with respect to participation in and will agree to a virtual hearing.

The Joint Parties propose the following briefing schedule with respect to this citation:

- October 2020: CPA files an opening brief setting forth its legal and policy arguments for dismissal of the citation. CPA serves any testimony and evidence necessary to support the additional facts set forth in Section I above.

- Three weeks later: CPED files a responsive brief setting forth its legal and policy arguments for enforcement of the citation and issuance of a specified penalty.  
CPED serves any testimony and evidence necessary to support the additional facts set forth in Section I above.
- One week later: CPA files a reply brief on legal and policy issues. No additional facts or evidence can be submitted in reply.

Respectfully submitted,

\_\_\_\_\_  
/s

Catherine Rucker  
Consumer Protection and Enforcement  
Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Tel. (415) 703-1755  
Email: Catherine.rucker@cpuc.ca.gov

Attorney for Consumer Protection and  
Enforcement Division

\_\_\_\_\_  
/s

Patrick Ferguson  
Davis Wright Tremaine LLP  
505 Montgomery Street, Ste 800  
San Francisco, CA 94111  
Tel. (415) 276-6500  
Email: patrickferguson@dwt.com

Attorney for Clean Power Alliance of Southern  
California

Nancy S. Whang, Esq.  
General Counsel  
Clean Power Alliance of Southern California  
555 W. 5<sup>th</sup> St., 35<sup>th</sup> Floor  
Los Angeles, CA 90013  
Tel. (213) 595-7818  
Email: nwhang@cleanpoweralliance.org

Dated: September 22, 2020