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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 Reforms and Refinements, and Establish Forward Resource Adequacy Procurement Obligations.	Rulemaking 25-10-003

MOTION OF THE WESTERN POWER TRADING FORUM AND THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION FOR STAY OF ORDERING PARAGRAPH 16 OF DECISION 26-07-008

Gregory Klatt
Douglass, Liddell & Klatt
411 E. Huntington Drive, Suite 107
Arcadia, California 91006
Telephone: (626) 802-5733
Email: klatt@energyattorney.com

Attorney for the Western Power Trading Forum

Jan Smutny-Jones
Chief Executive Officer
Independent Energy Producers Association
P.O. Box 1287
Sloughhouse, California 95683
Telephone: (916) 296-8584
Email: Smutny@iepa.com

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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 Reforms and Refinements, and Establish Forward Resource Adequacy Procurement Obligations.	Rulemaking 25-10-003

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Pursuant to Public Utilities Code Section 1735 and Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission or CPUC), the Western Power Trading Forum (WPTF) and the Independent Energy Producers Association (IEP) (collectively, Applicants) respectfully move for a stay of Ordering Paragraph 16 of Decision (D.) 26-07-008 pending the Commission's disposition of Applicants' concurrently filed Application for Rehearing.

I. INTRODUCTION AND RELIEF REQUESTED

Ordering Paragraph 16 of D.26-07-008 imposes a new prospective requirement on Resource Adequacy (RA) contracts for the California Independent System Operator Corporation's (CAISO) Imbalance Reserve (IR) products. For contracts executed after the Decision's effective date, the provision requires RA contracts to specify that the resource owner is ineligible for asserted IR "capacity-related" revenue payments (subject to a utility-owned-generation exception) and requires load-serving entities

(LSEs) to use the CAISO Day-Ahead Market Enhancements (DAME) Transitional Measures (DTM), or other equally effective means, to return those revenues to the LSE that shows the resource.[1]

Applicants request a narrow stay of Ordering Paragraph 16 only. They do not seek to stay the remainder of D.26-07-008, the CAISO tariff provisions governing IR, or any resource's must-offer, bidding, performance, or settlement obligations under the CAISO Tariff. A stay would simply preserve contractual flexibility while rehearing is pending: counterparties could continue to negotiate IR revenue treatment and could mutually elect the DTM, but they would not be compelled by Ordering Paragraph 16 to adopt the challenged allocation.

Immediate relief is warranted because the Decision is already effective. Ordering Paragraph 27 states that the adopted rules are effective immediately unless otherwise stated, and Ordering Paragraph 16 applies to contracts executed after the Decision's effective date. Thus, while the Application for Rehearing is pending, the challenged rule is already affecting solicitations, supplier offers, negotiations, contract drafting, and pricing for future and multi-year RA transactions. Those contracting consequences cannot be fully recreated or unwound if Ordering Paragraph 16 is later modified or removed.[2]

The Commission has broad discretion to avoid that result. In D.19-12-064—also an RA rulemaking—the Commission stayed the challenged decision pending rehearing because the requirements might later be modified, and a stay would avoid interim harm.

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[1] D.26-07-008, OP 16.

[2] D.26-07-008, OP 16, OP 27.

The same concern applies here: staying Ordering Paragraph 16 preserves contractual flexibility without suspending any operational reliability requirement.[3]

II. LEGAL STANDARD

Public Utilities Code Section 1735 provides that an application for rehearing does not itself stay a Commission decision, "except in such cases and upon such terms as the commission by order directs." The Commission therefore has broad discretion to grant a stay. In deciding whether to do so, the Commission considers: (1) whether the moving party will suffer serious or irreparable harm absent a stay; (2) whether the moving party is likely to prevail on the merits of the application for rehearing; (3) the balance between the harm to the moving party or public interest if a stay is denied and the decision is later reversed, and the harm to other parties or the public interest if a stay is granted and the decision is later affirmed; and (4) other factors relevant to the particular case.[4]

These factors are flexible, not rigid prerequisites. The Commission may grant a stay based on any factor or other case-specific considerations and need not give primary weight to irreparable harm in every case.[5] D.11-05-050 likewise granted a stay where rehearing presented a reasonable possibility that new requirements would need modification.[6]

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[3] D.19-12-064 at 1–2.

[4] Pub. Util. Code § 1735; D.19-12-064 at 1.

[5] D.19-12-064 at 1; D.21-05-034 at 3.

[6] D.11-05-050 at 2–3.

III. A STAY OF ORDERING PARAGRAPH 16 IS WARRANTED

A. Absent a Stay, Ordering Paragraph 16 Will Cause Serious and Difficult-to-Unwind Contracting and Market Consequences While Rehearing Is Pending.

Ordering Paragraph 16 is prospective, but that makes a stay more—not less—important. The relevant harm occurs when new contracts are solicited, priced, negotiated, selected, and executed under the challenged rule. Sellers must decide now how to price RA capacity in light of IR revenues they may be required to surrender while retaining resource-specific operational and settlement consequences. LSEs, in turn, must evaluate offers and structure procurement under the same mandated allocation. Once those decisions are made, later Commission action cannot recreate the competitive solicitation, restore alternative offers that were not selected, or retroactively eliminate pricing and bidding responses induced by the rule.

The Application for Rehearing explains why the consequences may extend beyond contract language. Ordering Paragraph 16 separates the party submitting the IR offer and bearing resource-specific award and settlement consequences from the party receiving the DTM remainder. The Decision itself rejected zero-dollar IR bidding because of concerns about market distortion and storage opportunity costs, yet it adopted the mandatory revenue allocation without findings regarding the combined effect on IR offers, energy bids, IFM co-optimization, future RA prices, or total customer costs. Until those issues are resolved on rehearing, requiring new contracts to embed the challenged allocation risks producing market and contracting effects that cannot be fully reversed later.[7]

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[7] D.26-07-008 at 113–115; Application for Rehearing at 21–27.

That practical concern is especially strong here. D.19-12-064 granted a stay in an RA proceeding because parties faced potential harm if challenged requirements were later modified on rehearing. Preserving flexibility during rehearing avoids the same risk.[8]

B. Applicants Have Demonstrated a Meaningful Likelihood of Prevailing on at Least Part of Their Application for Rehearing.

Applicants need not prove every rehearing argument now. D.11-05-050 granted a stay although it did not expect all arguments to succeed because some created a reasonable possibility of modification. The Application readily exceeds that threshold.[9]

Applicants' rehearing showing readily meets that threshold. First, Finding of Fact 22 states that IR and Reliability Capacity (RC) "may be used interchangeably," even though the record describes separate products that clear in different processes and serve complementary functions. Second, Finding of Fact 23 states only that IR compensation "may include" capacity-related and opportunity-cost components; neither that finding nor the Decision identifies the DTM remainder as compensation for an RA obligation already purchased by the LSE. Third, the Decision extends D.05-10-042's historical RUC payment rule without the same identified match between an express RA obligation and a specific payment for satisfying that obligation. The Application also identifies missing findings under Section 1705, failure to consider Section 380's full set of efficiency, equity, investment, retention, and cost requirements, and a substantial federal-jurisdiction issue concerning state-mandated disposition of FERC-jurisdictional CAISO compensation.[10]

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[8] D.19-12-064 at 1–2.

[9] D.11-05-050 at 2.

[10] Application for Rehearing at 14–20, 27–31.

Those issues are especially significant because the Decision simultaneously acknowledges that IR is new, that the record does not yet establish market-clearing prices, and that additional reporting is needed for at least three years before the Commission can better understand the effects of the new products and revenue-allocation rules. At minimum, the Application establishes a reasonable possibility that Ordering Paragraph 16 will require modification or suspension after rehearing.[11]

C. The Balance of Harms and the Public Interest Strongly Favor a Narrow Stay.

The asymmetry between granting and denying a stay is substantial. If a stay is denied and Applicants later prevail, the challenged allocation may already be embedded in multi-year RA agreements, reflected in supplier pricing, and incorporated into CAISO market-offer strategies. Reversing the rule would not automatically restore the contracting opportunities, prices, or market behavior that would have existed without the mandate. By contrast, if a stay is granted and Ordering Paragraph 16 is ultimately affirmed, the interim effect is limited: counterparties remain free to negotiate the same allocation voluntarily, including through mutual election of the DTM, and the Commission may require the rule prospectively after rehearing is resolved.

A stay also creates no reliability gap. CAISO will continue to procure IR in the Integrated Forward Market, and RA resources remain subject to applicable CAISO Tariff obligations, including the requirements associated with IR offers and awards. Staying Ordering Paragraph 16 changes only who must receive a disputed portion of the resulting revenue under future bilateral RA contracts. It does not reduce RA

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[11] D.26-07-008 at 114–116 & OP 18.

procurement obligations, eliminate any CAISO product, alter CAISO's optimization, or excuse any resource from performance.[12]

The public interest therefore favors preserving the ability of buyers and sellers to negotiate during the short rehearing period rather than forcing new contracts to adopt an allocation whose legal and economic basis is under direct challenge. That approach preserves reliability while minimizing the risk of later contract disruption and avoidable transaction costs.

D. The Newness of IR and the Commission's Own Data-Gathering Requirements Are Additional Factors Favoring a Stay.

The Decision acknowledges that IR products are new, that the present record does not establish likely market-clearing prices, and that the Commission needs additional information concerning prices, costs, revenues, and disputes. It therefore orders at least three years of reporting beginning in the third quarter of 2026 and states that the Commission will consider proposals to modify the IR revenue-allocation rules after it can evaluate pricing data and better understand the effects of removing the prohibition.[13]

That acknowledged uncertainty is a compelling "other factor." D.11-05-050 treated the novelty of a regulatory requirement and incomplete implementation as reasons to preserve the status quo pending rehearing. Here, the requested stay is narrower: IR and all associated reliability obligations continue, while only the mandatory contractual allocation is held pending rehearing.[14]

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[12] CAISO Tariff §§ 31.3.1.1, 31.3.1.6, 40.6.1(3), (5), 40.6.2; D.26-07-008, OP 16.

[13] D.26-07-008 at 114–116 & OP 18.

[14] D.11-05-050 at 3.

IV. CONCLUSION

For the foregoing reasons, WPTF and IEP respectfully request that the Commission stay Ordering Paragraph 16 of D.26-07-008 pending disposition of their concurrently filed Application for Rehearing, or until further order of the Commission. All other provisions of D.26-07-008 would remain in effect.

Respectfully submitted,

Gregory Klatt
Douglass, Liddell & Klatt

Attorney for the Western Power Trading Forum

August 10, 2026

Jan Smutny-Jones
Chief Executive Officer

Independent Energy Producers Association