

Decision 19-10-021 October 10, 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

DECISION AFFIRMING RESOURCE ADEQUACY IMPORT RULES

Summary

This decision affirms 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

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

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. At issue is whether certain unspecified imports used to meet RA requirements qualify as “Energy Product[s]” that “cannot be curtailed for economic reasons,” as required by D.04-10-035 and D.05-10-042. It is also unclear whether these unspecified RA contracts 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 affirms the RA import requirements, as set forth in D.04-10-035 and D.05-10-042. The Commission does not seek to delay affirmation of the RA import requirements, or consider alternative approaches to

⁶ See, e.g., Cal Advocates Reply 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.

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. Import Energy Products That Cannot Be Curtailed for Economic Reasons

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, 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” resources, the resources

¹¹ AReM Comments at 6.

¹² SDG&E Comments at 9.

¹³ CAISO Comments at 2.

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, PG&E, and SCE. IEP views RA imports without a firm energy delivery obligation as speculative supply.¹⁴ SCE states that D.04-10-035 “correctly identified the requirements for an import to count as RA given the market conditions at the time” 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 reliably provide for energy and capacity to serve their load at that time.”¹⁵

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. One of the goals of the RA program is to ensure that sufficient energy flows into California when the system is peaking in order to maintain grid reliability. As such, we find that the import requirements in D.04-10-035 and D.05-10-042 are critical to the objectives of the RA program and affirm those requirements in this decision. In addition, we underscore that a contract for an import energy product that is available only when called upon in the CAISO’s day-ahead market or residual unit commitment process does not qualify as an “energy product” that “cannot be curtailed for economic reasons.”

In affirming the existing requirements for import RA contracts, we clarify that a non-resource-specific RA import is required to self-schedule into the

¹⁴ IEP Comments at 3.

¹⁵ SCE Comments at 2.

CAISO markets consistent with the timeframe reflected in the governing contract. However, this requirement does not apply to resource-specific RA imports, including dynamically scheduled resources, since resource-specific imports have a physical resource backing the assigned RA capacity and therefore, do not carry the same concerns about speculative supply as with non-resource-specific imports.

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 an “energy product” that “cannot be curtailed for economic reasons” is required to be self-scheduled into the CAISO markets, consistent with the timeframe established in the governing contract. The Commission agrees with the CAISO that import RA resources should be accounted for in the current MCC buckets and align with identified reliability needs, consistent with existing requirements.

To address comments regarding the inflexible nature of self-scheduled resources, we note that the CAISO’s current Availability Assessment Hours (AAH) are 4:00 p.m. to 9:00 p.m. The Availability Assessment Hours are a set of five consecutive hours that correspond to the operating periods when high demand conditions typically occur and when availability of RA capacity is most critical to maintaining system reliability. In order to avoid the self-scheduling of imports during periods of negative pricing, the Commission encourages LSEs to utilize the MCC buckets and self-schedule their resources during periods of high demand.

In addition to the MCC buckets, LSEs can manage the potential market inefficiencies that may result from self-schedules in other ways. For example, LSEs can opt to rely on RA imports to a lesser degree in the Spring and other off-peak months, when negative prices are more likely to occur. This would result in

more reliance on resource-specific RA from within California rather than import RA energy products.

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 the next 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).¹⁶ 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.¹⁷ SCE asserts that D.04-10-035 already imposes this requirement on LSEs.¹⁸

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

¹⁶ Powerex Comments at 13.

¹⁷ Calpine Comments at 2.

¹⁸ SCE Comments at 3.

the pool of suppliers to only those who hold firm transmission.¹⁹ 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.²⁰ 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. 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 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.

¹⁹ MSCG Comments at 6.

²⁰ PG&E Comments at 3.

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.²¹

The Commission agrees that in order to demonstrate compliance with the RA import requirements, LSEs 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 or the scheduling coordinator for the resource. 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 scheduled energy into the CAISO markets, to verify compliance. Energy Division will use import data obtained from the CAISO to verify monthly compliance. The Commission directs Energy Division to report on the annual aggregated 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

²¹ CAISO Comments at 4.

this time. Should Energy Division determine that a non-specified import RA 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 (Pub. Util.) Code and comments were allowed under Rule 14.3. Opening comments were filed on September 26, 2019 by AReM, BPA, CAISO, Calpine, Cal Advocates, CalCCA, City of San Diego, DMM, GPI, the Joint Environmental Parties, MRP, MSCG, PG&E, PGP, Powerex, SCE, SDG&E, Shell, and WPTF. Reply comments were filed on October 1, 2019 by American Wind Energy Association of California (AWEA-CA), Calpine, DMM, IEP, MRP, MSCG, PG&E, Powerex, and SDG&E.

All comments have been thoroughly considered. Significant aspects of the proposed decision that have been revised in light of the comments are mentioned specifically in this section. However, additional changes have been made to the proposed decision in response to comments that may not be discussed here. We do not summarize every comment but rather, focus on major arguments made in which the Commission did or did not make revisions in response to party input.

Many parties' comments attempt to re-litigate and elaborate upon arguments that were raised in comments to the ACR, such as assertions that a firm energy requirement will lead to market inefficiencies and increase costs for LSEs and customers, that a decision on the import requirements should be postponed until a future phase or other stakeholder process, and that import RA resources should be subject to an alternative requirement. The Commission

reiterates its conclusion that D.04-10-035 and D.05-10-042 (the 2004/2005 decisions) established the requirements for import contracts to count as RA and affirms the requirements in this decision.

Several parties, including AReM, CalCCA, Calpine, MSCG, and Shell, state that the Commission is not merely clarifying the import requirements but changing the requirements, since the requirement for energy to flow during the AAH window did not exist in D.04-10-035 and D.05-10-042. The Commission intended to apply the 2004/2005 requirements more narrowly to peak system periods in response to comments to the ACR. However, we are persuaded that adding the requirement that energy flow during the AAH window could alter the integrity of the 2004/2005 decisions and be perceived as an additional requirement. Accordingly, we have modified the decision to remove the requirement that energy must flow during the AAH window.

A few parties, including AReM, CalCCA, Calpine, MSCG, and Shell, also contend that requiring firm energy to flow for import RA contracts is a wholly new requirement that did not previously exist. AReM and CalCCA argue that the 2004/2005 decisions do not include a definition of “firm energy” or “Import Energy Product.”²² MSCG argues that the 2004/2005 decisions do not specifically require “firm *delivery* of energy during certain periods regardless of CAISO dispatch awards in order to satisfy import RA requirements.”²³

The Commission finds that parties have not provided credible support as to why the 2004/2005 decisions do not set forth the requirements for import contracts to count as RA. We are not persuaded by parties’ attempts to parse or

²² AReM Comments on Proposed Decision at 2, CalCCA Comments on Proposed Decision at 3.

²³ MSCG Comments on Proposed Decision at 4.

disregard the pertinent language of the 2004/2005 decisions. D.04-10-035 states that an import RA 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 (not seller’s choice).” Reading the enumerated paragraph together, as intended, clearly delineates the requirements for an import contract to count as an RA resource. To the extent that parties find the 2004/2005 decisions to be ambiguous, that should have been litigated in the proceeding leading up to D.04-10-035 and D.05-10-042. However, to address concerns that the term “firm energy” is unclear, we have replaced the term with “energy product” that “cannot be curtailed for economic reasons,” to mirror the existing requirements.

Calpine adds that “[t]he market has been operating for many years with the understanding that the provision of import RA capacity, consistent with the CAISO tariff, entails a must offer, not a must deliver, obligation. The Commission and Energy Division Staff has been aware of this practice and have not raised concerns until recently.”²⁴ We again reiterate that this market “understanding” is and has been squarely at odds with the existing requirements. As stated in the ACR, the Commission and Energy Division staff became aware of the suspect bidding behavior (and the absence of self-scheduling of energy) following DMM’s September 2018 RA import report. Energy Division staff issued its request for information in April 2019 to further evaluate the concern and the ACR was issued in July 2019. Historically, Energy Division staff did not obtain bidding and scheduling data for RA imports from

²⁴ Calpine Comments on Proposed Decision at 3.

the CAISO, unlike for in-state resources, and had no means to observe the suspect bidding behavior.

SCE comments that the existing import requirements should not apply to resource-specific import RA since such resources have a physical resource backing the RA assigned to the resource, as opposed to non-specific resources that are not backed by a physical resource. The CAISO also has visibility into resource-specific import RA and requiring such resources to self-schedule may not provide the CAISO with necessary flexibility. Calpine, DMM and SDG&E support SCE's recommendation. The Commission agrees that it is unnecessary to apply the affirmed requirements to resource-specific RA and modifies the decision to reflect that.

SCE also comments that the decision should clarify that "a self-schedule in the CAISO market for non-resource specific RA import resources during the AAH window provides for the 'firm energy' required by the decision."²⁵ SCE notes that when a bid is submitted to the CAISO market, there is no guarantee of the delivery of energy without a CAISO market dispatch award and therefore, an LSE can only self-schedule the resource to meet the import requirement. We agree that clarification is necessary that a self-schedule into the CAISO market is sufficient to satisfy the requirements and have modified the decision as such.

Many parties reiterate arguments for grandfathering in existing contracts that do not satisfy the 2004/2005 requirements. Much of these arguments focus on a change to the 2004/2005 requirements, namely that requiring energy to flow during the AAH window constitutes a new requirement. The Commission is not persuaded to grandfather in contracts that are in violation of the Commission's

²⁵ SCE Comments on Proposed Decision at 4.

existing requirements, particularly since the AAH requirement has been removed, and declines to modify the decision.

A few parties, including CalCCA, Shell and MSCG, argue that requiring out-of-state RA resources to self-schedule into the CAISO markets impermissibly discriminates against out-of-state generators in violation of the U.S. Constitution and Senate Bill 100. The Commission disagrees. The RA program was developed pursuant to Pub. Util. Code Section 380 following the 2000-2001 energy crisis during which numerous suppliers engaged in physical and economic withholding.²⁶ The Commission thus acts under its authority as a state agency authorized under the California Constitution²⁷ to assure a reliable, adequate energy supply for the state. Also, the fact that resource-specific RA imports are exempt from the self-scheduling requirement further underscores the stated purpose of this decision and the RA program: to assure availability of generation that is under an RA contract when and where needed.

Moreover, due to the CAISO's market operation rules that contain distinct requirements for import resources versus in-state resources,²⁸ out-of-state

²⁶ See D.04-10-035 at 3.

²⁷ California Constitution, Article XII, Section 1.

²⁸ Under the CAISO's market operation rules, import resources under RA contract:

"are not required to be resource specific or to represent supply from a specific balancing area. RA import resources are only required to be shown, and make offers as shown, at a specific intertie point in the CAISO's system. Import RA . . . does not have any further obligation to bid into the real-time market if not scheduled in the day-ahead integrated forward market or residual commitment process." Resource Adequacy - Revised Straw Proposal (July 1, 2019) at 39, available at: <http://www.aiso.com/Documents/RevisedStrawProposal-ResourceAdequacyEnhancements.pdf>.

generation is not and cannot be treated identically to in-state generation resources. Further, Pub. Util. Code Section 761.3 provides for Commission oversight of the operations and maintenance of in-state generation resources to assure safe and reliable supply of energy resources in California. As part of this oversight, the Commission developed General Order 167, which provides various recordkeeping, inspection, and standards of operation applicable only to in-state generation resources. There are no similar provisions for out-of-state generation resources.

CalCCA, MSCG, and Shell also argue that requiring out-of-state generation to actually supply energy in California invades the Federal Energy Regulatory Commission's (FERC) regulatory jurisdiction. We disagree and find that the cases cited by parties are inapposite to our situation and ignore federal law. The Federal Power Act expressly provides for state authority to assure the reliability of long-term energy supply within their jurisdictions.²⁹

The Commission is thus unpersuaded by parties' belated legal arguments. To the extent parties believe the requirements of the 2004/2005 decisions impermissibly discriminate against out-of-state generators or intrude on FERC's jurisdiction, those legal challenges should have been raised in response to D.04-10-035 and D.05-10-042.

CAISO summarizes market inefficiencies that may result from an RA must-flow requirement, including that such a requirement: would foreclose the

In-state RA resources are not subject to the above requirement but rather, "have an ongoing must-offer obligation in the CAISO's Real Time markets, and are subject to both emergency recall and Exceptional Dispatch directions from the CAISO." *Id.* at 40. For out-of-state resources, the CAISO does not have the ability to issue an emergency recall, nor is there assurance that external non-resource-specific resources will respond to CAISO Exceptional Dispatch determinations. *Id.*

²⁹ 16 U.S.C. § 824o(i)(3).

ability for RA imports to help the CAISO shape net-load ramping needs, would increase the need for flexible generation as inflexible supply increases, and could lead to a decrease in energy revenues for internal resources.³⁰ DMM expresses concern that a large volume of self-schedules could result in market inefficiencies but states that limiting energy delivery to the AAH window will likely mitigate much of the CAISO's concerns. DMM supports the proposed decision as an interim measure that will help ensure reliability for RA imports during peak ramping hours while alternative solutions are being developed.

While we recognize the CAISO's concerns, we emphasize the Commission's purpose to ensure a reliable, adequate energy supply for the state and the RA program's purpose to ensure sufficient, reliable energy to maintain grid reliability during peak system periods – objectives which may not necessarily align with the CAISO's market inefficiency concerns. We acknowledge that market inefficiencies could result from the 2004/2005 decisions and thus intend to work closely with the CAISO to consider and develop modifications to the existing RA import rules.

Finally, several parties recommend clarifications to the existing import RA requirements, such as the CAISO's proposal that the decision use NERC-accepted terminology to define standards and SCE's proposal to remove the term "spinning reserves" as outdated. We agree that proposals to update the terminology should be considered, but decline to modify the original decisions at this time. We encourage parties to raise these proposals in the next phase of the proceeding that considers modifications to the import RA requirements.

³⁰ CAISO Comments on Proposed Decision at 2.

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 non-resource-specific RA imports are required to self-schedule into the CAISO markets. This requirement should not apply to resource-specific RA imports, including dynamically scheduled resources.

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. A contract for an import energy product that is available only when called upon in the CAISO's day-ahead market or residual unit commitment process should not qualify as an "energy product" that "cannot be curtailed for economic reasons."
3. For non-resource-specific RA imports, an "energy product" that "cannot be curtailed for economic reasons" should be self-scheduled into the CAISO market consistent with the timeframe established in the governing contract. This requirement should not apply to resource-specific RA imports, including dynamically scheduled resources.
4. Import RA resources should be accounted for in the current MCC buckets and align with identified reliability needs.
5. 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

or the scheduling coordinator for the resource. Energy Division should obtain and review monthly 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. For non-resource-specific Resource Adequacy (RA) imports, an "energy product" that "cannot be curtailed for economic reasons" shall self-schedule into the California Independent System Operator markets, consistent with the timeframe established in the governing contract. This requirement shall not apply to resource-specific RA imports, including dynamically scheduled resources.

3. A contract for an import energy product that is available only when called upon in the California Independent System Operator's day-ahead market or residual unit commitment process does not qualify as an "energy product" that "cannot be curtailed for economic reasons," as required by Decision 04-10-035 and Decision 05-10-042.

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

5. 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 or the scheduling coordinator for the resource. Energy Division shall review each contract or attestation to verify compliance, as well as review data obtained from the California Independent System Operator.

6. Energy Division shall report on the annual aggregated data in its annual Resource Adequacy report.

7. This proceeding remains open.

This order is effective today.

Dated October 10, 2019, at San Francisco, California.

MARYBEL BATJER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners