

**SAN DIEGO COMMUNITY POWER**

To: Fellow Board of Directors and Members of the Public

From: Joe Mosca, Chair of the Board

Subject: Cancellation of the March 26, 2020 Board of Directors Meeting

Date: March 20, 2020

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In light of local, regional, state, and federal guidance regarding precautions necessary to mitigate the potential spread of COVID-19, the Board of Directors of San Diego Community Power (SDCP) feels that it is best to cancel the March 26, 2020 Board of Directors meeting.

We acknowledge that this outbreak presents an unprecedented level of concern to local communities. Despite the disruptions, SDCP remains committed to work towards bringing clean and affordable energy to the residents and businesses of the Cities of Chula Vista, Encinitas, Imperial Beach, La Mesa and San Diego. Both myself and Cody Hooven, our Interim Executive Officer of SDCP, are actively monitoring this complex situation, and we will update you on plans for upcoming meetings.

In order to keep the Board and the public apprised of startup activities that continue despite this crisis, attached is this month's Operations and Administration report from Ms. Hooven.

We have created our own San Diego Community Power website 1.0, found at [www.sdcommunitypower.org](http://www.sdcommunitypower.org). Our next regularly scheduled meeting is April 23, 2020 at 5p.m.

While it is likely that our next Board meeting will be online, we intend to resume in-person Board Meetings as soon as federal, state, and local guidance indicates that it is prudent to do so.

Please do not hesitate to contact us if you have any questions or concerns. We thank you and appreciate your continued support.

Be well,  
Joe Mosca  
Chair, San Diego Community Power  
Councilmember, City of Encinitas

Attachment:  
March 20, 2020 Operations and Administration report

## SAN DIEGO COMMUNITY POWER

To: San Diego Community Power Board of Directors

From: Cody Hooven, SDCP Interim Executive Officer  
Director/Chief Sustainability Officer, City of San Diego

Subject: Operations and Administration Report from the Interim Executive Officer

Date: March 20, 2020

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This memo is provided to SDCP's Board of Directors in lieu of its March 26, 2020 Board meeting, which has been cancelled in light of COVID19 concerns and directives. This report provides a brief overview of SDCP startup activities since the February Board meeting.

### **A) COVID19 and Board Meetings**

The Board Chair and staff are working collaboratively monitor the latest guidance and preventative measures to address the COVID19 situation. We are working to establish a process to host the April 23<sup>rd</sup> Board meeting as an entirely virtual, or remote access, meeting and to ensure that the Board and the public can participate to the fullest extent possible.

### **B) Implementation Plan Certification**

A major milestone for SDCP implementation was achieved with the certification of our *Implementation Plan and Statement of Intent* which was submitted to the CPUC in December 2019 and effective as of March 1, 2020.

### **C) New SDCP Website**

SDCP has launched its new website [www.sdcommunitypower.org](http://www.sdcommunitypower.org), which will become SDCP's central repository of information and postings about the Agency's plans and start-up activities. This website (version 1.0) will eventually evolve or be replaced by SDCP's permanent website (version 2.0) once branding and messaging is established and additional functionality and other "bells and whistles" are needed. Please check the website for up-to-date resource information as well as Board meeting and Committee information.

### **D) Vendor RFPs and Upcoming Contracts**

- 1) Negotiations with River City Bank continue for the credit and banking facility. As of today, we are on track to present credit and banking items to the Board at its April 23, 2020 meeting.
- 2) The vendor contract for schedule coordination is also slated for the Board's April 23<sup>rd</sup> meeting

- 3) The data management/call center RFP was released on March 11, 2020 and closes April 1, 2020. Once bid evaluation is complete, we anticipate bringing a contract with the recommended vendor to the Board's April 23rd meeting.
- 4) Marketing and communications services is the next RFP to be issued, expected in the coming weeks.

**E) Discussions with San Diego Gas & Electric (SDG&E)**

Staff and SDCP consultants have met several times with various SDG&E staff to discuss coordination needs and opportunities for collaboration. Areas of discussion include load forecasting, integrated resource planning, resource adequacy, etc. A variety of filings and proceedings at the California Public Utilities Commission (CPUC) will require information from and close coordination between SDCP and SDG&E. Now that Pacific Energy Advisors (PEA) is on board, we will include them and SDCP staff and transition away from member city staff and other consultants as most of the conversations will center around the expertise provided by PEA in consultation with SDCP staff. There are two scheduled meetings with SDCP staff, SDCP consultants, and SDG&E to comply with meet and confer requirements of the CCA formation process and to discuss longer-term resource planning.

**F) Regulatory Update**

The California Public Utilities Commission (CPUC) has broad regulatory authority over the energy sector in California, including partial jurisdiction over Community Choice Aggregation (CCA) programs. SDCP and other CCA program customers are regularly affected by CPUC decisions regarding power resources, rates, financial obligations and data retention among other things. The regulatory update (attached) includes CPUC proceedings that are currently active and will have an impact on SDCP. This is not an exhaustive list. Staff and Tosdal, APC will continue to monitor or engage in these proceedings, and other regulatory activities, as needed to ensure SDCP's interests are represented.

**Attachments:**

Attachment A: March 2020 Regulatory Update

To: Cody Hooven, Executive Officer, San Diego Community Power

From: Ty Tosdal, Regulatory Counsel, Tosdal APC

Date: March 20, 2020

**RE: ENERGY REGULATORY UPDATE**

The energy regulatory update addresses recent decisions, orders, notices and other developments at the California Public Utilities Commission (Commission) that affect San Diego Community Power (SDCP).

**Power Charge Indifference Adjustment (PCIA) (R. 17-06-026)**

PCIA Working Group (WG) 3 issued its final report on February 21, and SDCP submitted comments on March 13 supporting the consensus proposals described below. The comments are attached. The working group was tasked with developing proposals for IOU portfolio management and optimization as part of the PCIA proceeding. CalCCA and Southern California Edison (SCE) served as team leads. The consensus proposals, if adopted, would resolve a majority of the issues that were identified by the Commission for the working group. The Commission will also have to address non-consensus items also further described below.

Consensus Items –

1. Allocation and market offer-based frameworks for disposition of the IOUs' PCIA-eligible Products
  - Local RA – Mandatory allocation. Costs recovered through CAM-like mechanism called the “PCIA Showing”.
  - System and Flexible RA – Annual option to take allocation of system and flex RA. Declined allocations offered to market. Costs recovered through CAM-like mechanism.
  - GhG-free energy (hydroelectric, nuclear only) – Annual option to obtain an allocation of GhG-free energy. Declined allocations will be reallocated among the PCIA-eligible LSEs.
  - RPS resources – Annual option to receive allocation of RPS resources. To receive long-term contracting benefits, allocations must be taken through the remaining life of the longest contract in their PCIA vintage, which must last at least 10 years from the allocation start date. Declined allocations will be offered for sale on the market.
  - Updates to the PCIA ratemaking mechanism, including assigning \$0/kW-month (kW-mo) Market Price Benchmark (MPB) to Local RA attributes and a one-time exclusion of the PCIA rate cap to accommodate the local RA allocation.
2. Assignment of contracts –
  - IOUs will issue a Request for Interest (RFI) in 2021 and 2022 to solicit interest from their RPS counterparties in pursuing agreements to optimize the PCIA portfolios. The

RFI will solicit interest from IOU counterparties to potentially contract with other LSEs for buy-outs or full assignments of the IOU's RPS contracts that would remove the contracts from the IOU's portfolio.

- IOUs will connect interested counterparties with LSEs, who will then be free to engage in negotiations. Final agreement between the counterparty and other LSE will be subject to (1) agreement by and among the counterparty and IOU, and (2) approval of the Commission for IOU cost recovery purposes.
- The RFI will, along with the request for potential contract assignments, solicit offers from contract counterparties for proposed terminations, buy-outs, or amendments. IOUs will negotiate changes to contracts "if doing so is deemed by the IOU to be in the best interest of all customers."
- IOUs must engage in detailed reporting on progress of RFIs.

### 3. Implementation –

- Implementation in 2022 for 2023 deliveries of RPS energy, GHG-free energy, and System and Flex RA, and 2022 for the 2024-25 compliance years for Local RA.
- Interim approach to voluntary GHG-free energy allocations be implemented at the earliest possible date following the WG 3 Final Decision for deliveries starting in 2021.

### Non-Consensus Items –

- Market Offer process for Local RA
- Next steps and timetable for RPS allocations and market offers
- Exclusion to PCIA rate cap for payments made by IOUs pursuant to certain Commission approved contract buy-outs, assignments, terminations or other optimization activities
- IOU disallowance risk based on actions not taken in response to the RFI, as submitted in a report on the RFI process

### **SDG&E Rate Design Window Application (A.17-12-013)**

The Commission issued a final decision on March 12 denying San Diego Gas & Electric's (SDG&E) proposal to increase the minimum bill paid by residential customers by 400%, from a little over \$10 to \$38.19 per month. The increase would have negative impacts on low income residents, as well as on self-generators and customers with low usage. The Commission denied the proposal on grounds that it fails to comply with previous Commission decisions that established volumetric rates as a key principle of rate making, is not supported by the evidence, and is inconsistent with the minimum bills of other utilities, which are set at around \$10. The decision leaves intact SDG&E's existing minimum bill at approximately \$10 per month.

**Resource Adequacy (R. 17-09-020, R.19-11-009)**

The Commission on March 16, 2020, issued an Order Granting Limited Rehearing of D. 19-10-021 (Order), which is attached. D. 19-10-021 established certain restrictions on the use of Resource Adequacy (RA) imports to address the issue of so-called fictitious capacity. This is capacity that is bid into the market at prices above the day ahead market to ensure that it does not clear and therefore is never delivered. The Order, which has its own decision number, D. 20-03-016, requires that Load Serving Entities (LSEs) self-schedule non-resource specific RA imports but not resource specific RA imports.

The Commission justified its decision based on concerns raised in a report from the California Independent System Operator (CAISO) and on its own previous decisions (D.04-10-035 and D.05-10-042), which the Commission said established applicable rules, although this point was widely disputed by various parties. Procedurally, D. 19-10-021 was proposed, changed and approved in short order. Substantial revisions were made to the Proposed Decision (PD) without providing parties an opportunity to comment.

Following the issuance of D. 19-10-021, CalCCA, CAISO and Powerex Corp. filed applications for rehearing on the following grounds: (1) D. 19-10-021 fails to provide findings or substantial evidence to support its conclusion that the import RA requirements it adopts are affirmations of D. 04-10-035; (2) violates Public Utilities Code section 380 by exacerbating potential RA capacity shortfalls in 2021; (3) violates state and federal due process requirements; (4) facially discriminates against out-of-state generators in violation of the United State Constitution and Public Utilities Code section 399.11(e); and (5) encroaches on FERC jurisdiction by tethering the requirements to and directly and substantially impacting bidding and pricing in the CAISO energy markets.

The Commission issued a stay on D. 19-10-021 in response to the applications for rehearing. The Order issued this week grants rehearing on the following issues: (1) comments on the self-scheduling requirement; (2) whether D. 19-10-021 clarified previous decisions (D.04-10-035 and D.05-10-042) or established new requirements; (3) additional evidence supporting the self-scheduling requirement; and (4) vagueness with respect to certain definitions and requirements.

The Ruling leaves the stay on the RA import decision in place, and acknowledges that there is a new RA proceeding underway, R.19-11-009, where these issues may be considered going forward. However, no schedule was adopted, and it is not clear when, or in which proceeding these issues will be addressed.

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

Order Instituting Rulemaking to Review, Revise,  
and Consider Alternatives to the Power Charge  
Indifference Adjustment

Rulemaking 17-06-026

**COMMENTS OF SAN DIEGO COMMUNITY POWER  
ON THE WORKING GROUP 3 REPORT**

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March 13, 2020

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

Order Instituting Rulemaking to Review, Revise,  
and Consider Alternatives to the Power Charge  
Indifference Adjustment

Rulemaking 17-06-026

**COMMENTS OF SAN DIEGO COMMUNITY POWER  
ON THE WORKING GROUP 3 REPORT**

**I. Introduction**

San Diego Community Power (“SDCP”) submits these comments on the final report of Power Charge Indifference Adjustment (“PCIA”) Working Group 3 (“Working Group 3 Report” or “Report”)<sup>1</sup> in the above-captioned proceeding, pursuant to the *Administrative Law Judge’s Ruling Modifying Proceeding Schedule*, dated January 22, 2020. SDCP appreciates the substantial time and effort of the co-chairs, California Community Choice Association (“CalCCA”), Southern California Edison (“SCE”) and Commercial Energy, as well as other contributing parties, in developing the detailed and thoughtful proposals contained in the Report. If adopted, these proposals would represent a major step forward with respect to management of Investor-Owned Utility (“IOUs”) portfolios in light of departing load. SDCP supports adoption of the consensus proposals contained in the report, as well non-consensus items designed to implement these measures in the near term, specifically RPS and RA allocations, but has some concerns about the assignment process and the absence of shareholder responsibility provisions. Given the complexity of portfolio optimization and the concerns expressed below, regular and

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<sup>1</sup> *Final Report of Working Group 3 Co-Chairs: Southern California Edison Company (U-338E), California Community Choice Association, and Commercial Energy (“Report”), February 21, 2020, R. 17-06-026.*



detailed reporting on the Request for Interest (“RFI”) process is critical to obtaining timely information about the progress of these measures. With this information in hand, implementation should be closely monitored by the California Public Utilities Commission (“Commission”) for unintended consequences and adverse effects on energy providers and markets. Revisions to the process may be necessary in the future to achieve desired results.

## **II. Background**

SDCP is a new CCA program that will serve customers in the City of San Diego, City of Encinitas, City of La Mesa, City of Chula Vista, and the City of Imperial Beach beginning next year. Reducing the greenhouse gas (“GhG”) emissions at competitive rates is the driving factor in the formation of SDCP and that goal is supported by the Climate Action Plans (“CAP”) of its member cities. SDCP was formed when member cities formed a Joint Powers Authority on October 1, 2019. SDCP submitted an Implementation Plan and Statement of Intent to the Commission on December 23, 2019, and intends to begin serving customer load in March 2021.

## **III. Consensus Proposals Should Be Adopted with Regular and Detailed Reporting about the Request for Interest Process**

SDCP supports the consensus proposals contained in the Report. Allocations paired with market offers for several types of energy products currently in the IOU portfolios will provide a path for CCA program customers to benefit from resources that they currently pay for through the PCIA. At the same time, the process will benefit bundled customers by right sizing IOU portfolios and reducing costs. The consensus proposals have been vetted, analyzed and extensively discussed and negotiated. While SDCP has some concerns about the assignment process, discussed further below, which has great potential to be a cost-effective and efficient mechanism to make portfolio adjustments, and the lack of shareholder responsibility provisions, consensus proposals should nevertheless be adopted.

The various processes described in the Working Group 3 Report are new approaches, and it is apparent that detailed reporting, particularly regarding RFI implementation, is critical for purposes of Commission oversight and the success of portfolio optimization.<sup>2</sup> Monitoring the process and making necessary adjustments along the way should be a top priority. Without timely disclosure of data and other information by the IOUs, close supervision cannot be performed, adjustments to the process cannot be made, and effective portfolio optimization may not come to pass.

#### **IV. Implementation of RPS and RA Allocations Should Occur in the Near Term**

The RPS and RA allocation proposals in the Working Group 3 Report can and should be implemented as soon as practicable, i.e., in the near term, following the Commission's decision on these matters.<sup>3</sup> From a practical standpoint, there appear to be no major barriers to RPS allocations that do not jeopardize IOU compliance with RPS obligations being performed so that delivery can occur in 2021. Procedurally, allocations can be approved through a motion to update RPS plans, as CalCCA suggests.<sup>4</sup> Adopting this schedule will permit the portfolio optimization process to reach its goals sooner rather than later, and save customers the associated costs of portfolio misalignment.

SDCP also supports the adoption of the process for Local and System and Flex RA allocations beginning in 2021 for the 2022 System and Flex RA compliance year and the 2023 and 2024 Local RA compliance years.<sup>5</sup> To the extent that IOU portfolios already include excess RA relative to their customer needs, moving forward in the near term should be more efficient

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<sup>2</sup> See, e.g., Report at 56, 64.

<sup>3</sup> *Id.* at 63.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 61-62.

and cost effective than waiting until a later time, permitting the portfolio adjustment process to move forward in a timely fashion that benefits bundled and departing customers alike.

**V. Assignment Is a Powerful Tool and Should Be Adopted, but the Process May Require Objective Standards and Criteria to Be Effective at Scale**

Assignment of contracts has the potential to be powerful tool for portfolio optimization and SDCP supports taking steps toward adoption of a viable assignment mechanism. From a legal standpoint, assignment enables the LSE providing retail customers with power to enter into a direct relationship with counterparties supplying power, without the legal complications and risk factors associated with third parties. It also provides the proper allocation of risk and incentives between contracting parties. Practically, assignment permits contracts to be managed by the LSE responsible for serving customers with the associated power available under the contract, rather than a party that is not directly responsible for those customers. Finally, properly supervised assignment may provide bundled and unbundled customers with the most efficient and low cost means of portfolio optimization relative to other options.

While the Commission's endorsement of an assignment mechanism would be a positive step and provide the IOUs with explicit authorization to move forward, the process outlined in the Report contains certain elements that give rise to concerns about whether it will be an effective tool at scale.<sup>6</sup> The proposal envisions a process by which an IOU serves as matchmaker between counterparties and CCA programs, beginning with the IOU gauging interest and obtaining minimum requirements from potential sellers, informing the market of interest and seeking out LSEs that may be interested for additional discussions.<sup>7</sup> The IOUs will then "*match* Interested Sellers with Prospective Buyers meeting the Interested Seller's minimum requirements

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<sup>6</sup> See Report at 54 - 57.

<sup>7</sup> *Id.* at 54.

and allow the Potential Buyers and Interested Sellers the opportunity to negotiate a Contract Assignment.”<sup>8</sup> The IOUs have “discretion” to accept or reject any proposed transactions or arrangements.<sup>9</sup> The number of transactions will be capped at 20 per RFI.<sup>10</sup>

Time will tell, but SDCP is concerned that the process may not go far enough in establishing objective standards or criteria for assignment to be viable. Without such standards, it is possible that the IOUs are able to exercise unilateral discretion or subjective criteria at multiple points in the process, and perhaps even veto transactions that may benefit customers. Furthermore, in that event, the Commission would have limited ability to evaluate IOU decisions against any guidance or standards. Granted, the IOUs are parties to the contracts at issue and have certain legal rights under them. At the same time, the Commission has broad authority to structure an assignment process in light of departing load trends that includes objective standards and guidance.

These concerns reinforce the need for a robust RFI reporting process that is frequent and includes detailed information about the assignment process, as recommended in the Report.<sup>11</sup> Notification about seller outreach and contacts, contracts assigned or otherwise modified, PCIA impacts, contracts in negotiations, and net customer value are critical to evaluating the success of the process. Particularly important, the Report recommends that a list of assignment proposals rejected by the IOU also be included. Additional details about the basis for rejection and some means of verification or further review should also be considered by the Commission as part of

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<sup>8</sup> *Id.* (emphasis added).

<sup>9</sup> *Id.* at 55.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 56.

the reporting process. With the information contained in RFI reporting, the Commission will be able to closely observe the assignment process and make any necessary adjustments.

## **VI. Shareholder Responsibility Is a Critical Component of Portfolio Management**

The Report does not recommend any new or modified provisions related to IOU shareholder responsibility.<sup>12</sup> Whether approved in the near term or at some point in the future, however, a mechanism for shareholders to share the cost of inadequate portfolio management is important and should be adopted. Shareholders enjoy the benefits of the utility business enterprise, and like any other investor or business owner, must share the costs as well. Without cost exposure, IOU shareholders and management have little incentive to right size IOU portfolios to meet reduced customer numbers and manage costs accordingly. Ratepayers are not insurers and should not be held solely responsible for avoidable costs.

## **VII. Conclusion**

SDCP asks the Commission to take these comments into consideration and adopt the consensus and other proposals from the Report discussed above. SDCP looks forward to further dialogue with the parties and Commission on portfolio management issues.

Respectfully submitted,

*/s/ Ty Tosdal*

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March 13, 2020

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<sup>12</sup> *Id.* at 64.



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

**ORDER GRANTING LIMITED REHEARING OF DECISION (D.) 19-10-021**

In this Order, we dispose of the applications for rehearing of Decision (D.) 19-10-021 (Decision), filed by California Community Choice Association (CCCA), Powerex Corp., and the California Independent System Operator (CAISO). We have determined that good cause has been demonstrated to grant limited rehearing of the Decision, as outlined below.

**I. BACKGROUND**

Issued on October 17, 2019, D.19-10-021 sought to address the problem of “speculative supply” as outlined in a September 2018 CAISO report regarding Resource Adequacy (RA) imports. (D.19-10-021, p. 3.) According to CAISO, many RA import contracts have in the past represented fictitious capacity, or “speculative supply” that is not actually available to the energy market when it may be needed most. (D.19-10-021, p. 6.) As an example of how such fictitious capacity might be contracted for, the CAISO report indicates that RA imports can be routinely bid significantly above projected prices in the day-ahead market to help ensure that they do not clear, thus relieving the imports of any obligation to deliver capacity into the real-time market. (D.19-10-021, p. 3.) These contracts for fictitious capacity are viewed as a potentially significant problem by CAISO. With the tightening of energy markets, it is viewed as increasingly important

that RA contracts for imports represent actual capacity that can be called upon to deliver energy when it is needed most.

Based on concerns raised in the CAISO report, an Assigned Commissioner's Ruling (ACR) was issued in Commission Rulemaking (R.) 17-09-020, seeking comments on issues including whether RA import contracts should include the actual delivery of firm energy with firm transmission, and clarifying that only a bidding obligation is insufficient to meet RA rules. (D.19-10-021, p. 4.) In addition, the ACR sought comments on what sort of compliance structure, including additional remedies or corrective measures, should be imposed for violations of RA rules. (D.19-10-021, p. 5.)

In the Decision, we determined 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.’” (D.19-10-021, p. 8.) We affirmed “the requirements for RA 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.” (D.19-10-021, p. 9; see also D.19-10-021, p. 20 [Finding of Fact 2; Conclusions of Law 2 & 3].) We further clarified that non-resource-specific RA imports are required to self-schedule into the CAISO markets, whereas resource-specific RA imports are not, “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.” (D.19-10-021, pp. 8-9.) As to penalties for violations of RA rules, the Decision states that “the existing RA penalty structure is sufficient to deter violations of the import rules and we decline to modify the penalty structure at this time.” (D.19-10-021, pp. 12-13.) Finally, the Decision states that “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.” (D.19-10-021, p. 10.)



On October 24, 2019, just a week after the issuance of the Decision, CCCA filed an application for rehearing of D.19-20-021, as a well as a motion for stay of the Decision. On November 18, 2019, Powerex Corp. and CAISO also filed applications for rehearing of D.19-10-021.

Five responses were filed in support of CCCA's motion for stay by Shell Energy North America (US), L.P. (Shell), Western Power Trading Forum (WPTF), CAISO, Morgan Stanley Capital Group Inc. (Morgan Stanley), and Powerex Corporation.

Responses to the applications for rehearing of D.19-10-021 were filed by WPTF, Pacific Gas & Electric Co. (PG&E), Shell, Morgan Stanley, Southern California Edison Co. (SCE), and Calpine.

On December 23, 2019, in D.19-12-064, we issued a stay of D.19-10-021 on the ground that there is potential for harm to the parties in the event that the requirements of D.19-10-021 are modified in response to CCCA's application for rehearing of D.19-10-021. (See D.19-12-064.)

The three rehearing applications present the following allegations of error: 1) the Decision fails to provide findings or substantial evidence to support its conclusion that the import RA requirements it adopts are affirmations of D.04-10-035 (CCCA, CAISO, Powerex Corp.); 2) the Decision violates Public Utilities Code section 380 by exacerbating potential RA capacity shortfalls in 2021 (CCCA); 3) the Decision violates state and federal due process requirements (CCCA, CAISO, Powerex Corp.); 4) the Decision facially discriminates against out-of-state generators in violation of the United State Constitution and Public Utilities Code section 399.11(e) (CCCA, Powerex Corp.); and 5) the Decision encroaches on FERC jurisdiction by tethering the requirements to and directly and substantially impacting bidding and pricing in the CAISO energy markets (CCCA).

We have reviewed the allegations of error contained in the applications for rehearing filed by CCCA, CAISO and Powerex, and have determined that good cause exists to grant limited rehearing of D.19-10-021 on some of the issues raised in the rehearing applications. These issues are addressed below.

## II. DISCUSSION

### A. **Limited rehearing of D.19-10-021 should be granted in order to clarify the self-scheduling requirement, provide parties an opportunity for comment, and provide evidentiary support for adoption of the new requirements contained in the Decision.**

Rehearing applicants allege that the Decision violates state and federal due process requirements, and constitutes an unlawful taking by abrogating existing RA contracts. (CCCA Rehearing Application (Reh. App.), pp. 9-20; Powerex Reh. App., pp. 16-22; CAISO Reh. App., pp. 5-9.) Rehearing applicants further allege that the Decision’s RA contracting requirements are unconstitutionally vague. (CCCA Reh. App., pp. 16-18.) Rehearing applicants also claim that the Decision provides no legal or factual basis for distinguishing between resource-specific and non-resource-specific RA imports. (CAISO Reh. App., pp. 2-5.) We grant limited rehearing as to certain of these issues, as discussed below.

#### 1. **Public Utilities Code Section 311(e) and Rule 14.1 of the Commission’s Rules of Practice and Procedure**

Rehearing applicants allege that the Decision violates Public Utilities Code section 311(e) and Rule 14.1 of the Commission’s Rules of Practice and Procedure because substantive changes were made to the Proposed Decision (PD) without circulating the revised PD for another round of comments by the parties. Rehearing applicants are correct that changes were made to the original PD based on comments to the original PD submitted by the parties. The revised PD was posted on the Commission’s website on the day before the Decision was voted out. The Decision specifically notes that the “self-scheduling” requirement contained in D.19-10-021 was suggested by SCE in its comments to the PD. (D.19-10-021, p. 16.)

Public Utilities Code section 311(e) provides that an “alternate” decision of the Commission is any substantive revision to a proposed decision that materially changes the resolution of a contested issue. (Pub. Util. Code, § 311(e).) An alternate must be subject to public review and comment before being voted on by the Commission.

Rule 14.1 of the Commission’s Rules of Practice and Procedure provides that a substantive revision to a PD is not an “alternate proposed decision” if the revision does no more than make changes suggested in prior comments on the PD. (Commission Rules of Practice & Procedure, Rule 14.1(d).)

The Decision differs in two material respects from the PD. First, rehearing applicants point out that the PD did not expressly contain the self-scheduling requirement of D.19-10-021, but instead contained a requirement that “RA import contracts should be structured to require energy to flow during peak system periods.” (Proposed Decision, September 6, 2019, at p. 13 [Finding of Fact 2].) The self-scheduling requirement was first suggested by SCE in its comments on the PD. (See D.19-10-021, pp. 16, 20 [Finding of Fact 2].) Second, the Decision differs from the PD in that it distinguishes between resource-specific and non-resource-specific imports, requiring only non-resource-specific imports to self-schedule in the CAISO markets. (See D.19-10-021, pp. 16, 20 [Finding of Fact 2].)

In this instance, and given the specific facts and posture of this proceeding, we have determined within our discretion that the combination of creating a distinction between resource-specific and resource-non-specific RA import contracts, and applying a self-scheduling requirement to one of these resources (resource-non-specific contracts), should be subject to comment by the parties. Thus, we grant limited rehearing of D.19-10-021 for the purpose of allowing comment by the parties on these two specific issues.

**2. Whether the Decision is a clarification of past Commission decisions.**

Rehearing applicants next allege that the Decision alters the standards articulated fifteen years ago in two Commission decisions, while characterizing this alteration as merely a clarification of existing standards. (D.19-10-021, p. 8.) In D.04-10-035, we indicated that qualifying capacity for import contracts must be an Import Energy Product with operating reserves, must be incapable of being curtailed for economic reasons, and is delivered on transmission that cannot be curtailed in operating

hours for economic reasons or bumped by higher priority transmission. (See D.04-10-035, p. 54 [Conclusion of Law 13] (adopting qualifying capacity formulas as set forth in Section 5 of the Workshop Report).) D.04-10-035 further notes that “[f]ailure of a resource to be deliverable undercuts the whole concept of resource adequacy.” (D.04-10-035, p. 51 [Finding of Fact 14].)

In D.05-10-042, we stated that “[t]he obligation of suppliers to be available and perform is established through their contracts with LSEs.” (D.05-10-042, p. 98 [Finding of Fact 5].) We further noted that “[i]t is necessary that RA resources be available to the CAISO when and where needed. It is consistent with that determination that all RA resources have an obligation to make themselves available to the CAISO in real time to the extent they are physically capable.” (D.05-10-042, p. 98 [Finding of Fact 6].) D.05-10-042 also indicates that, “[b]ecause we are implementing a physical capacity-based RAR program, resources should only count to the extent that their capacity can be relied upon to perform.” (D.05-10-042, p. 103 [Conclusion of Law 3].) Finally, D.05-10-042 addresses the issues of double counting and deliverability, noting that firm import LD contracts do not raise such issues, but that other LD contracts that are not firm import contracts should be phased out due to concerns about double counting and deliverability. (D.05-10-042, p. 68.) We noted that, in weighing the trade-off between business opportunities for suppliers and the reliability benefits of must-offer protocols, the Commission decides in favor of reliability. (D.05-10-042, p. 68.)

D.19-10-021 relies upon the above determinations in D.04-10-035 and D.05-10-042 and attempts to clarify these determinations by indicating that an “energy product” that “cannot be curtailed for economic reasons” (per the terms used in D.04-10-035) “is required to be self-scheduled into the CAISO markets, consistent with the timeframe established in the governing contract.” (D.19-10-021, pp. 8-9; see also D.19-10-021, p. 20 [Finding of Fact 2].) The Decision further indicates that “[a] contract for an energy import contract that is available only when called upon in the CAISO’s day-ahead market or residual unit commitment process” does not constitute an “energy

product” that “cannot be curtailed for economic reasons” within the meaning of D.04-10-035. (D.19-10-021, p. 20 [Conclusion of Law 2].)

After reviewing this allegation of error, we have determined that good cause has been established to grant limited rehearing as to this specific issue.

### **3. Evidentiary record**

Rehearing applicants next allege that the Decision modifies the requirements contained in D.04-10-035 and D.05-10-042, without an evidentiary record to support such modifications. As alleged by rehearing applicants, since the self-scheduling requirement was proposed for the first time in SCE’s comments on the PD (see D.19-10-042, p. 16), there was not an opportunity for the Commission or the parties to develop a record in support of the new self-scheduling requirement combined with the distinction between resource-specific and non-resource-specific RA imports, or to consider the possible ramifications of imposing both the self-scheduling requirement and the distinction between resource-specific and non-resource-specific RA imports for the first time in the revised PD, one day before the issuance of the Decision. For this reason, CAISO asks the Commission to reopen the record to establish RA import rules that are supported by the record in the proceeding, rather than “relying on a strained interpretation of prior Commission decisions.” (CAISO Reh. App., p. 2.)

In support of its argument that the Decision lacks substantial evidence, CAISO points to a factual finding in the Decision, and alleges that this finding lacks evidentiary support within the current record. Finding of Fact 2 states:

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.

(D.19-10-021, p. 20 [Finding of Fact 2].) As to this finding, CAISO notes that, while there may be a basis to treat resource-specific imports differently than non-resource-specific imports, “there is no basis whatsoever for such a factual finding in the record of this proceeding.” (CAISO Reh. App., p. 5.) CAISO further suggests that we should take

up the issue of the distinction between resource-specific and non-resource-specific RA imports by reopening the record in this proceeding:

On rehearing, the Commission may find it is appropriate to limit resource adequacy imports to resource specific or dynamically-scheduled resources, but it should do so based on a fully formed record. The CAISO agrees such resources provide certain benefits because they provide visibility through telemetry; can be accounted for accurately; have an enforceable must offer obligation; and the CAISO can validate their commitment and marginal costs. The Commission should consider the facts fully and, if necessary, modify the resource adequacy import rules appropriately.

(CAISO Reh. App., p. 5.) CCCA also argues that the Decision lacks any evidentiary foundation for distinguishing between resource-specific and non-resource-specific RA imports. (CCCA Reh. App., pp. 6-8.)

Given the specific facts and posture of this proceeding, we have determined that good cause exists to grant limited rehearing as to this particular issue, in order to allow for the development of a factual record to support these determinations. We acknowledge that there is a successor proceeding, R.19-11-009, that is considering issues that may be pertinent to the record on limited rehearing, and that a future rehearing decision may incorporate the record from R.19-11-009.

#### **4. Vagueness**

CCCA alleges in its rehearing application that the Decision is impermissibly vague as to certain key terms and definitions, thus leaving RA importers uncertain as to what types of contracts are sufficient to meet the requirements of the Decision. (CCCA Reh. App., pp. 16-18.)

CCCA asserts that the Decision does not define “resource-specific” and “non-resource-specific” RA import contracts. This is an important distinction because only non-resource-specific importers are required to self-schedule per the requirements of D.19-10-021. CCCA also asserts that this terminology was not used in the 2004 and 2005 Commission decisions, so there is no point of reference with respect to what these

terms mean. In addition, CCCA argues that the Decision leaves open the question of when an import RA contract must self-schedule into the CAISO market. The Decision states that an energy product that cannot be curtailed for economic reasons must self-schedule into the CAISO markets consistent with the timeframe established in the governing contract. (D.19-10-021, pp. 8-9.) CCCA alleges that this requirement is vague and unclear as to the timeframe referenced, particularly if the contract itself does not specify a timeframe for self-scheduling. (CCCA Reh. App., p. 18.)

We have determined that good cause exists to grant limited rehearing as to this specific issue, in order to clarify these specific terms so that they are understood and able to be implemented by all RA importers and stakeholders.

### III. CONCLUSION

For the reasons stated above, we have determined that good cause has been demonstrated to grant limited rehearing of D.19-10-021. The scope of this limited rehearing is described below.

**THEREFORE, IT IS ORDERED** that:

1. Limited rehearing of D.19-10-021 is hereby granted, as described below.
2. Limited rehearing is granted in order to allow party comments as to the self-scheduling requirement, and as to the distinction between resource-specific and resource-non-specific RA import contracts.
3. Limited rehearing is granted in order to augment the existing evidentiary record regarding the distinction between resource-specific and resource-non-specific RA import contracts, and to provide a sufficient evidentiary basis for this distinction.
4. Limited rehearing is granted in order to clarify certain specific terms used in D.19-10-021, including “resource-specific” and “resource-non-specific,” as well as to clarify the timeframe within which RA importers are required to self-schedule in the CAISO market.
5. The stay of D.19-10-021 ordered in D.19-12-064 shall remain in effect until this limited rehearing is completed. This stay includes Ordering Paragraph 2 of

D.19-10-021, which addresses the self-scheduling requirement and the distinction between resource-specific and resource-non-specific RA imports.



6. This proceeding remains open.

This order is effective today.

Dated March 12, 2020 at Sacramento, California.

MARYBEL BATJER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners