

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to Oversee  
the Resource Adequacy Program,  
Consider Program Refinements, and  
Establish Annual Local and Flexible  
Procurement Obligations for the 2019 and  
2020 Compliance Years.

Rulemaking 17-09-020  
(Filed September 28, 2017)

**CPOWER, ENEL X NORTH AMERICA, INC., LEAPFROG POWER, INC., AND THE  
CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL (“JOINT PARTIES”)  
NOTICE OF EX PARTE MEETINGS**

April 28, 2020

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Pursuant to Rule 8.4 of the Commission's Rules of Practice and Procedure, CPower, Enel X North America, Inc. (Enel X), Leapfrog Power, Inc. (Leapfrog), and the California Efficiency + Demand Management Council (CEDMC) (collectively, “Joint Parties”) hereby timely give notice of the following three ex parte communications.<sup>1</sup>

The three communications occurred on the same day, Thursday, April 23, 2020, and took place by telephone conference line provided by the Commission's office at 505 Van Ness Avenue, San Francisco, California 94102 . Each involved the same proceeding (R.17-09-020 (Resource Adequacy (RA))), the same information, and the same persons initiating and present by telephone for the Joint Parties in addition to each attending advisor. The Joint Parties also timely filed and served the Three Day Advance Notice of the grant of these three meetings in R.17-09-020 (RA) on April 20, 2020. A copy of the Notice specific to each meeting was provided electronically to the attending advisor prior to the start of the meeting.<sup>2</sup>

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<sup>1</sup> Pursuant to Rule 8.4(a) of the Commission's Rules of Practice and Procedure, the “notice may address multiple ex parte communications in the same proceeding, provided that notice of each communication identified therein is timely.”

<sup>2</sup> Updated CPUC Practitioner Alert (effective through May 1, 2020).

The communications were oral and written. The written material was a handout summarizing the Joint Parties' position on the Proposed Decision (Proposed Decision) mailed in R.17-09-020 9RA) on March 26, 2020; was distributed electronically prior to the start of each meeting to each attending advisor;<sup>3</sup> and is attached and incorporated by reference hereto as Attachment A.

Each communication was initiated by Sara Steck Myers, Attorney at Law, on behalf of the Joint Parties. Jennifer Chamberlin, Executive Director, Market Development, for CPower; Mona Tierney-Lloyd, Enel X Head, State Public Policy, for Enel X; Amaani Hamid, Market Development Manager, for Leapfrog; Greg Wikler, Executive Director, for CEDMC; and Luke Tougas, Consultant for CEDMC, were also present at the time of the three telephonic communications.

As to the three telephonic communications on April 23, 2020, the first occurred at 1:30 p.m. with Maria Sotero, Energy Advisor to Commissioner Martha Guzman-Aceves. The second occurred at 2:00 p.m. with Anand Durvasula, Legal and Policy Advisor to Commissioner Liane Randolph, at 2:00 p.m. The third occurred at 3:00 p.m. with Yuliya Shmidt, Advisor to Commissioner Clifford Rechtschaffen, at 3:00 p.m. Each telephonic communication lasted approximately 30 minutes.<sup>4</sup>

Ms. Myers began each meeting by indicating that the purpose of each meeting was to discuss the Joint Parties' position on the Proposed Decision, on which CPower, Enel X, and CEDMC had filed Opening Comments and Reply Comments on April 15

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

<sup>4</sup> In further compliance with Commission rules, the instructions included in the Commissioners' Meeting Request forms, and the Commission's Updated Practitioner Alert, this Notice has been served on the R.17-09-020 service list and electronically copied to each of the attending advisors and to [Guzman-Aceves.Exparte@cpuc.ca.gov](mailto:Guzman-Aceves.Exparte@cpuc.ca.gov), [Randolph.Exparte@cpuc.ca.gov](mailto:Randolph.Exparte@cpuc.ca.gov); and [Rechtschaffen.Exparte@cpuc.ca.gov](mailto:Rechtschaffen.Exparte@cpuc.ca.gov).

and April 20, 2020, respectively, that Leapfrog also supported. Ms. Tierney-Lloyd followed by providing an overview of what the Proposed Decision had adopted with respect to an RA Central Procurement Entity (CPE). Ms. Tierney-Lloyd's summary followed the points included in Section II of Attachment A hereto with a focus on the key elements of the Proposed Decision's adopted "Hybrid CPE Structure," by which Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) will be the CPE, will procure local RA capacity on behalf of all Load Serving Entities (LSEs), with related adopted cost allocation, cost recovery, and oversight by the Procurement Review Group (PRG) and the Independent Evaluator (IE). Ms. Tierney-Lloyd stated that the Joint Parties had multiple concerns and objections to this structure that could only be cured by significant modifications by an Alternate Proposed Decision or withdrawal of the Proposed Decision as written.

Mr. Wikler stated that, among other things, the Proposed Decision does not encourage or prioritize procurement of greenhouse-gas (GHG)-free resources like energy efficiency and demand response and, in turn, does not meet or further the State's Climate Change goals or comply with the statutorily mandated "Loading Order" that requires procurement by utilities of energy efficiency and demand response first in meeting any resource need. Mr. Wikler, therefore, urged that the Proposed Decision be modified to direct the CPE to follow and prioritize procurement of GHG-free resources as required by law and the Loading Order.

Ms. Chamberlin followed by pointing out the multiple ways in which the Proposed Decision will chill LSEs making their own procurement decisions or exercising a preference for GHG-free resources. In this regard, Ms. Chamberlin stated that the

adopted CPE structure would result in LSEs having to pay twice for Local Capacity Resources, first, by resources they have procured in their all-source procurement process not being selected by the CPE, then, second, by still having to pay their allocated share of resources purchased by the CPE on behalf of all LSEs in the local capacity area. According to Ms. Chamberlin, non-participating LSEs could use these resources for system or flex RA purposes, but that use does not have as high a value as local RA, which is typically a primary reason for the LSE procuring the resource in the first place. Further, Ms. Chamberlin pointed out that, even if the LSEs might be able to reduce the overall amount of local RA capacity procured in advance of its procurement process, the LSE will not receive 1:1 credit for its purchase. Ms. Chamberlin urged that the Proposed Decision be modified to provide LSEs this 1:1 credit for their local RA capacity purchases.

Ms. Chamberlin also identified how the Proposed Decision erred in its adopted cost recovery in distribution rates and in its cost allocation at odds with the manner in which the RA obligation is established, which is a pro-rata share of peak demand. Ms. Chamberlin stated that the Proposed Decision should be modified to allocate costs to LSEs based upon the pro-rata share of peak demand for which the CPE had to procure resources and to use a non-bypassable procurement-related charge like the Procurement Power Charge Indifference Adjustment (PCIA).

Ms. Tierney-Lloyd also expressed concern over the discretion and lack of oversight afforded the CPE by the Proposed Decision. Among other things, Ms. Tierney-Lloyd noted that the Proposed Decision permits the adopted CPE to procure more than the RA requirement permits, procure for a longer period than is required, may

not procure capacity if the price is too high, and will not be subject to penalties for failure to procure. According to Ms. Tierney-Lloyd, the Proposed Decision requires that only utility employees working in the CPE capacity to sign a code of conduct and only identifies generator information as requiring confidentiality.

To cure these defects, Ms. Tierney-Lloyd stated that the Proposed Decision should be modified to adopt the following protections by: (1) prohibiting the CPE from procuring more capacity than is required to meet RA or for a longer period of time than is required; (2) requiring the CPE to seek waivers for failure to procure and be subject to fines for failure to procure, as is applied to any other LSE; (3) requiring the CPE to be audited to determine if it is reducing California Independent System Operator (CAISO) backstop procurement; (4) requiring that utility employees working for the CPE are kept separate from other utility employees, with separate offices and separate servers, to prevent or limit employee transfers between the utility and the CPE; (5) requiring an audit of the CPE at regular intervals, including the first year, to determine how the code of conduct is protecting transfers of data within the utility organization; (6) requiring that all resource types, not just generation resources, receive confidential treatment of data; and (7) confirming that the IOUs' role in serving as the CPE is transitional until another company can perform the CPE functions.

Mr. Tougas made two final points regarding the Proposed Decision. First, Mr. Tougas noted that the Proposed Decision uses the term "IOU local DR resources," which could be construed, unless clarified, to include third-party resources in addition to the IOUs' own DR programs and, in turn, applies Load Impact Protocols (LIPs) to determine how IOU local DR resources are counted. Mr. Tougas stated that the

combined effect of these determinations is in conflict with Commission decisions and pending consideration of these issues in the separate RA Rulemaking (R.) 19-11-009. That is, according to Mr. Tougas, the Commission has already exempted the Demand Response Auction Mechanism (DRAM) from the LIPs and the issue of counting conventions is pending in Track 2 of R.19-11-009, and, given those circumstances, the Commission should not be prejudging the outcome of that issue in this proceeding.

Second, Mr. Tougas stated that the CAISO in its Comments on the Proposed Decision has asked the Commission to limit procurement of availability limited resources. Mr. Tougas indicated that the Proposed Decision should not be revised to make that change since the Commission already has Maximum Cumulative Capacity (MCC) buckets in place to limit the amount of availability-limited resources that an LSE can procure. Further, according to Mr. Tougas, potential revisions to the MCC Bucket approach are being considered or will be considered in either Track 2 or Track 3 of R.19-11-009, and adopting CAISO's recommendations would undermine that ongoing process.

Respectfully submitted by:

April 28, 2020

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**ATTACHMENT A**

**R.17-09-020 (RA) Proposed Decision on Central Procurement Entity  
CPower, CEDMC, Enel X NA, Leapfrog Position Statement  
April 23, 2020**

- I. CPower, Enel X North America, Inc. (Enel X), and the California Efficiency + Demand Management Council (CEDMC) filed Opening and Reply Comments on the Proposed Decision on Central Procurement in Resource Adequacy (RA) Program (PD) on April 15 and April 20, 2020, respectively. Leapfrog Power, Inc., supports these Comments, and, with CPower, Enel X, and CEDMC, collectively, are referenced as the “Joint Parties” herein.
- II. The PD does the following:
  - Adopts a “Hybrid” CPE Structure:
    - PG&E and SCE will be the Central Procurement Entity (CPE).
    - CPE will procure local RA capacity on behalf of all LSEs.
    - CPE will allocate costs for that procurement to all customers on a non-bypassable basis using the Cost Allocation Mechanism, which is recovered in T&D rates.
    - LSEs who have procured local RA resources can:
      - bid into the CPE auction
      - use the resource for system or flexible purposes
      - can show the resource to the CPE, in advance of the auction, but will only receive a pro-rata share of the contract value in the local capacity area
    - IOU CPEs will recover their administrative costs through the ERRA (Electric Resource Recovery Act). SDG&E raised a concern about ERRA for utility procurement.
    - It gives the IOU CPE the ability to defer procurement if RA prices are too high; it gives the CPE the ability to buy more capacity than is required to meet the local RA requirement and to procure for a longer period of time than 3 years, if it is in the best interest of ratepayers.
    - It requires oversight by the Procurement Review Group and the Independent Evaluator.
    - It requires employees working for the IOU’s CPE’s efforts to sign a code of conduct.
- III. The Joint Parties have identified multiple concerns and objections to the PD, as follows:
  - The PD does not encourage or prioritize procurement of GHG-free resources.
    - **Solution: Provide direction to the CPE to follow the loading order and prioritize GHG free resources.**
  - The PD will chill or eliminate the motivation of LSEs to make their own procurement decisions
    - The PD results in paying for Local Capacity Resources twice:
      - LSEs who offer their resources to the CPE in its all-source procurement process, may not be picked up. Then LSEs will pay for their resources plus its allocated share of resources purchased by the CPE on behalf of all LSEs in the LCA.
      - LSEs who do not participate can use these resources for system or flex RA purposes, however local RA capacity has a higher value than system or flex. This is a problem because the local RA value is typically a primary reason for the LSE procuring the resource.



Potential revisions to the MCC bucket regime are being considered in Track 2 and possible Track 3 of R.19-11-009, so any effort in this PD to impose additional limitations on availability-limited resources would undermine this process. Therefore, the Commission should disregard the CAISO's proposal.

For all of these reasons, the Joint Parties strongly urge that the PD be significantly modified by an Alternate Proposed Decision or withdrawn.