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

May 1, 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 two ex parte communications.[1]

The two communications occurred on the same day, Tuesday, April 28, 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 Notices of the grants of these two meetings in R.17-09-020 (RA) on April 20 and April 22, 2020. A copy of the Notice specific to each meeting was provided electronically to the attending advisor prior to the start of the meeting.[2]

[1] 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."
[2] 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 (RA) on March 26, 2020; was distributed electronically prior to the start of each meeting to each attending advisor;[3] 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; Andrew Hoffman, Chief Development Officer, for Leapfrog; Greg Wikler, Executive Director, for CEDMC; and Luke Tougas, Consultant for CEDMC, were also present at the time of the two telephonic communications.

As to the two telephonic communications on April 28, 2020, the first occurred at 1:00 p.m. with David B. Peck, Energy Advisor to Commissioner Marybel Batjer. The second occurred at 1:30 p.m. with Leuwam Tesfai, Chief of Staff, and Justin Regnier, Energy and Transportation Advisor, to Commissioner Genevieve Shiroma. Each telephonic communication lasted approximately 20 to 30 minutes.[4]

Ms. Myers began each meeting by indicating that the purpose of the 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 and April 20, 2020, respectively, that Leapfrog also supported. Ms. Tierney-Lloyd followed

[3] *Id*.
[4] 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 Batjer.Exparte@cpuc.ca.gov and Shiroma.Exparte@cpuc.ca.gov.

by providing an overview of the main concerns and objections the Joint Parties had with respect to the Proposed Decision's adopted RA Central Procurement Entity (CPE). Ms. Tierney-Lloyd's overview followed the points stated in Attachment A, including the Proposed Decision's failure to encourage or prioritize procurement of greenhouse gas (GHG)-free resources, its determinations that will chill or eliminate the ability of Load Serving Entities (LSEs) to make their own procurement decisions, the discretion afforded the adopted CPE and the lack of oversight of the CPE provided by the Proposed Decision, the failure either to provide sufficient oversight of utility employees working in the CPE capacity or to protect confidentiality, and misstatements and potential prejudgment of issues being considered in the current RA Rulemaking (R.19-11-009). Ms. Tierney-Lloyd stated that these shortcomings in the Proposed Decision could only be cured by significant modifications in an Alternate Proposed Decision or withdrawal of the Proposed Decision as written.

As to these objections, Mr. Wikler stated that the Proposed Decision's failure to encourage or prioritize procurement of GHG-free resources, like energy efficiency and demand response, results in an order that 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 afforded the CPE and the lack of oversight of the CPE provided 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 protections identified in Attachment A 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 auditied 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.

Finally, Mr. Tougas noted the two final points made in Attachment A regarding the Proposed Decision. First, 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. 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. Namely, 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, as indicated in Attachment A, the CAISO in its Comments on the Proposed Decision has asked the Commission to limit procurement of availability limited resources. The Joint Parties urge 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, 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:

May 1, 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 28, 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.

        - LSEs who show the capacity to the CPE in advance of its procurement process may reduce the overall amount of local RA capacity procured, however that LSE does not receive 1:1 credit for its purchase.
    - Solution: Give LSEs 1:1 credit for their local RA capacity purchases.
    - Cost recovery will discourage apples-to-apples comparisons of procurement costs due to recovery in distribution rates.
    - The allocation methodology is not consistent with the manner in which the RA obligation is established, which is a pro-rata share of peak demand.
    - Solution: Allocate costs to LSEs based upon the pro-rata share of peak demand for which the CPE had to procure resources and use a non-bypassable procurement-related charge like the PCIA.
- The PD creates concerns over the discretion of the CPE and a lack of oversight.
    - CPE may procure more than the RA requirement permits, may procure for a longer period than is required, may not procure capacity if the price is too high, and may not be subject to penalties for failure to procure.
    - Solution: CPE should not be able to procure more capacity than is required to meet RA or for a longer period of time than is required. The CPE should not be exempted from seeking waivers for failure to procure, nor should it be exempted from fines, as is applied to any other LSE.
    - Solution: The CPE should be audited to determine if it is reducing CAISO backstop procurement.
- The PD only requires the utility employees who will be working in the CPE capacity to sign a code of conduct.
    - Solutions: The PD should be modified to ensure that there is a requirement to keep these employees separated, separate offices, to use separate servers, to prevent or limit employee transfers between the two entities.
    - Solution: The PD should require 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.
    - The PD only identifies generator information as requiring confidentiality. Solution: The PD should be modified to ensure that all resource types receive confidential treatment of data.
    - Solution: The IOU in this role should be transitional until another company can perform the function, if this continues.
- The PD references use of Load Impact Protocols (LIPs) as the manner in which IOU local DR resources are counted. The term "IOU local DR resources" is unclear in that it could be misconstrued to include third-party resources in addition to the IOUs' own DR programs.
    - Solution: The Commission has already exempted the DRAM from the LIPs, and the issue of counting conventions for third-party DR is being discussed in Track 2 of R.19-11-009, so it should not be pre-judged here. The PD must be clarified that use of the LIPs applies to IOU DR programs or it must remove mention of the LIPs altogether.
- CAISO asks the Commission to limit procurement of availability limited resources.
    - Solution: The Commission already has Maximum Cumulative Capacity (MCC) buckets in place to limit the amount of availability-limited resources that an LSE can procure.

Potential revisions to the MCC bucket regime are being considered in Track 2 and possibly 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.