

**DOCKETED**

<b>Docket Number:</b>	24-OIR-01
<b>Project Title:</b>	Rulemaking on AB 1373 POU Capacity Payment to Implementation
<b>TN #:</b>	256876
<b>Document Title:</b>	CMUA Comments on AB 1373 PRM Workshop
<b>Description:</b>	N/A
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<b>Submitter Role:</b>	Public Agency
<b>Submission Date:</b>	6/14/2024 3:16:30 PM
<b>Docketed Date:</b>	6/14/2024

STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:  
Energy System Reliability

Docket No. 21-ESR-01

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**COMMENTS OF THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION  
ON THE MAY 31, 2024 ASSEMBLY BILL 1373 WORKSHOP**

**I. INTRODUCTION**

The California Municipal Utilities Association (“CMUA”) provides these written comments on the California Energy Commission (“CEC” or “Commission”) Assembly Bill (“AB”) 1373 Workshop, held on May 31, 2024 (“Workshop”).<sup>1</sup>

As publicly owned electric utilities (“POUs”), many of whom have operated in service of their customers for many, many, decades (some over a century), CMUA’s members are firmly committed to reliable system operation and practical rules that govern market participant behavior and contribute to overall system reliability. As consumer-owned utilities, we are also keenly focused on ensuring affordable rates for electric service. Ensuring reliability and affordable rates is the hallmark tension when developing procurement rules and why, at a fundamental level, key choices on overall procurement levels are properly housed with the ratemaking body of the relevant utility. For load-serving entities (“LSEs”) as defined under the Public Utilities Code,<sup>2</sup> this is the California Public Utilities Commission (“CPUC”). For local POUs that are CMUA members, this is their local governing body.

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<sup>1</sup> *Presentation for AB 1373 Pre-Rulemaking Workshop*, Cal. Energy Commission, (May 31, 2024), <https://efiling.energy.ca.gov/GetDocument.aspx?tn=256612&DocumentContentId=92423> (TN# 256612) (hereinafter referred to as “Workshop”).

<sup>2</sup> Cal. Public Util. Code § 380.

AB 1373<sup>3</sup> is sweeping legislation that, in relevant part, calls on the CPUC, by June 30, 2027, to annually assess a capacity payment on each LSE that does not meet its monthly system resource adequacy (“RA”) requirement. Most relevant here, the bill also would establish the Local Publicly Owned Electric Utility Capacity Payment Account (“POU Capacity Account”) in the Department of Water Resources (“DWR”) Electricity Supply Reliability Reserve Fund (“Reserve”). The bill generally establishes criteria and a methodology to make payments for the costs of the Reserve if both of two criteria are met: (1) when resources in the Reserve are triggered, and (2) within that applicable month, a POU located in the California Independent System Operator Balancing Authority Area (“CAISO POU”) fails to meet its own PRM. Finally, the CEC is required to submit a report by January 31, 2024 to the appropriate policy and budget committees of the Legislature that includes an assessment of whether each local publicly owned electric utility exceeded, met, or failed to meet its minimum planning reserve margin (“PRM”) and specified system RA requirements. This report has already been completed.<sup>4</sup>

We appreciate the work and collaborative approach taken by Staff to fulfill the mandate of the statute. The internal draft regulations<sup>5</sup> also were helpful in identifying focus areas. While these initial Comments reference the internal draft regulations, these Comments do not attempt to make comprehensive language suggestions at this time. CMUA and its members look forward to working with the Commission to develop clear regulations to govern capacity payments that may go into the POU Capacity Account.

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<sup>3</sup> Cal. Assembly Bill 1373 (2023-2024 Reg. Sess.) Available at: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202320240AB1373](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1373).

<sup>4</sup> *Staff Report - Assessment of Publicly Owned Utilities' Resource Adequacy*, Cal. Energy Commission, (Apr. 23, 2024), <https://efiling.energy.ca.gov/GetDocument.aspx?tn=255885&DocumentContentId=91738> (TN#255885).

<sup>5</sup> *CEC Internal Draft Regs for Capacity Payments*, Cal. Energy Commission, (May 29, 2024), <https://efiling.energy.ca.gov/GetDocument.aspx?tn=256584&DocumentContentId=92392> (TN #256584), (hereinafter referred to as “Draft Internal Regulations”).

## II. COMMENTS

### A. The Mechanism for Triggering Potential Liability for any Deficiency Payment Should be Clarified.

More discussion, clearer definition, and more explicit regulatory language is required to create clarity surrounding what triggers an examination of possible liability of a CAISO POU for a capacity payment.

First, operational actions by DWR and the CAISO that trigger a potential obligation should be specified. The current internal draft regulations simply mention a meet and confer process between the Commission and DWR.<sup>6</sup> It is CMUA's understanding that the resources in the Reserve are not bid into the CAISO Day-Ahead Market and are not counted toward RA requirements. We also understand that the determination to run the plants in the Reserve is made by the CAISO, dependent on system conditions, and that the CAISO issues dispatch instructions to the Scheduling Coordinator for the units. The exact system conditions in which the CAISO can call on the units, such as the Energy Emergency Alert ("EEA") level, should be specified. Also, CMUA presumes that to be "triggered" means that the plants in the Reserve actually run when called upon. This should be clarified. CMUA anticipates that there may be nuances in how the dispatch instructions work, particularly for older Once-Through-Cooling units that may have longer start times, and looks forward to that discussion.

Second, as we believe the Commission agrees, a CAISO POU should only have potential liability if units in the Reserve are triggered, *and* during the applicable month a CAISO POU has been found not to not meet its PRM. This is the clear and plain language of Section 80714(a)(1).<sup>7</sup>

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<sup>6</sup> Draft Internal Regulations at Section 1396(a).

<sup>7</sup> Cal. Wat. Code § 80714(a)(1).

Third, no charges should accrue to a POU if the CAISO dispatch instruction to a Reserve Unit is not in response to a CAISO operational condition. This is because the obligation to pay any deficiency charge is solely borne by POU's in the CAISO.

CMUA suggests that further understanding of these issues, particularly the operational portions and the determination to trigger resources in the Reserve, would benefit from a full discussion in a stand-alone workshop where the Commission staff, POU staff, DWR, and the CAISO can review processes and fully understand the issue.

B. The Regulations Should Clearly Reflect the Autonomy and Uniqueness of POU's in Determining Deficiencies and Accounting for Other RA-Equivalent Resources.

During the Commission Workshop held on May 31, 2024, the Commission requested feedback and additional information on whether there are other "RA-equivalent" resources that may not appear in supply plans but should nevertheless be considered when calculating whether a POU is deficient during a month where the Reserve is triggered. AB 1373 clearly preserves the construct that POU's are subject to the jurisdiction of their Local Regulatory Authority, including the adoption of each POU's individual PRM requirements and procurement practices. Each POU is best positioned to understand the resources and the needs in their respective jurisdictions. For example, POU's may have varying degrees of agricultural, residential, or commercial load within their jurisdictions. As such, programs such as demand response mechanisms may differ. These mechanisms and programs should be considered and counted when assessing whether a CAISO POU is deficient in a given month. Additionally, POU's are generally active wholesale market participants and may cover shortfalls within the month after a month-ahead RA showing. This procurement should also count when assessing whether or not a CAISO POU is deficient.

The draft regulations specify that a CAISO POU will be determined to be deficient "if the sum of its total capacity shown and total capacity credits for a month are less than its total system

resource adequacy obligation for that month.”<sup>8</sup> Further noting that the total deficiency for a month in which the CAISO POU is found to be deficient will be calculated as the CAISO POU’s total system resource adequacy obligation for the given month minus the sum of the total capacity shown and the total capacity credits for that month.<sup>9</sup> The CEC will calculate this using information included in a summary of each CAISO POU’s month-ahead forecasted 1-in-2 coincident peak load, PRM, total credits shown, and total capacity shown for the month for which the Reserve was used.<sup>10</sup>

CMUA appreciates the draft regulation’s language to the extent that the language recognizes that each POU is subject to their own PRM requirements, which requirements may or may not match those of other POUs. Further, CMUA understands that “total credits shown” includes any credited resources or programs as defined by the POU and believes this would include specific demand response programs resources. However, CMUA requests that the definition for “total credits” be updated to specifically include demand response resources and other programs and resources *as defined by the POU* to be RA-equivalent resources.

Additionally, as noted above, POUs may cover shortfalls within the month after a month-ahead RA showing. CMUA requests that RA resources which have a COD after, or are procured after, a month-ahead RA showing, but which are available and operating in the month that the Reserve is triggered be counted towards a POU’s RA showing. CMUA believes including these resources provides the best representation of a POU’s position during a month where the Reserve is triggered.

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<sup>8</sup> Draft Internal Regulations at Section 1396(d).

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

<sup>10</sup> Draft Internal Regulations at Section 1396(b)(1)-(2).

C. Assessing DWR Costs is Critical to Understanding Derivation of Any Deficiency Charge.

1. More Detail on the Cost Breakdown of the DWR Procurement is Needed.

Understanding the derivation of DWR charges is critical to developing a reasonable and supportable deficiency payment. According to the Workshop presentation,<sup>11</sup> DWR is responsible for identifying when resources have been called through the Reserve and if those resources are being used in a month to meet an identified reliability need. DWR is also responsible for providing information on resource costs. The AB 1373 Draft Regulations for Capacity Payments<sup>12</sup> states that DWR will “provide the cost associated with procuring the resources that make up the Reserve for that calendar year.” CMUA recognizes that the calculation for the unit cost will be used to calculate the capacity payment for the POUs. More detail is needed on how the DWR costs associated with procuring the resources align with the calculations for the unit costs, specifically, the inputs for the unit cost calculation “Cost for June thru Sept.” and the “Cost for other months”. Transparency helps regulated entities understand the basis of their financial obligations; thus, the CEC should provide more detail on how these cost values are derived as they will affect the ultimate capacity payment for CAISO POUs.

2. Reference in the Workshop to Use of Public Records Act Requests to Get Detailed Information Should Be Discussed Further. POUs Would Prefer Not to Do Ad Hoc and Burdensome Requests for Information Needed for any Calculation of the Deficiency Charge.

The Workshop presentation also notes that actual unit costs are “dependent on how often the resources run and performance” and that the costs are “based on contract provisions” that may be requested from DWR via Public Records Act (“PRA”) request.<sup>13</sup> The need to use PRAs

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<sup>11</sup> Workshop at Slide 10.

<sup>12</sup> Draft Internal Regulations at Section 1396(a).

<sup>13</sup> Workshop at Slide 13.

to get contract information should be discussed further. While CMUA and its members deal with public records issues routinely, and can speculate on possible reasons why this mechanism has been proposed, further discussion is warranted. This seems like a convoluted and complex process to determine inputs to calculate a utility's capacity payment. Furthermore, time would be a factor if a POU were to appeal its capacity payment; the time it would take for a POU to also submit and receive a response from a PRA request could be unworkable. CMUA recommends that further understanding on the reasons for proposing a fallback PRA process be included as an agenda item in the next workshop.

D. The Regulations Should Provide More Detail on What Remedies Are Available to a POU on Appeal.

CMUA appreciates the draft regulations' inclusion of a process by which a CAISO POU may submit additional information if the CAISO POU disagrees with staff's initial determinations of whether a CAISO POU failed to meet its minimum PRM. However, CMUA requests that the regulations include additional clarity on how a CAISO POU may appeal staff's recommendation to the Commission and the Commission's action on that recommendation. Specifically, CMUA requests that the regulations specifically include an appeal process describing the process under which a CAISO POU may request an additional review of the Commission's determinations.

Under the proposed draft regulations, if staff determines that a CAISO POU failed to meet its minimum PRM for any month during which the Reserve was used, staff shall (i) notify the CAISO POU of the determination, (ii) provide the POU with all the information on which staff based this determination, and (iii) provide the POU with a preliminary estimate of the associated capacity payment. Subsequently "[i]f a POU disagrees with staff's determination, it may...submit any information, data, invoices, or other documentation to demonstrate either that



the POU met its minimum planning reserve margin, or that the deficiency amount was lower than that determined by staff...” If, after the submission of the above information, staff still determines that a POU has failed to meet its minimum PRM, “staff shall recommend to the full commission the assessment of a capacity payment for the total deficiency for that POU.” The Commission will then consider staff’s recommendation and take action on the recommendation.<sup>14</sup>

CMUA requests that, in addition to the above provisions, the draft regulations be updated to also include an appeal process once the Commission has taken action on staff’s recommendation. While CMUA is open to discussing different options for this process, CMUA offers the following suggested pathways for initial discussion. For example, the draft regulations should include language providing that a CAISO POU may, within 30 days of the Commission determination, appeal that determination. The appeal would consist of written statements specifying the alleged errors in fact or law that resulted in an incorrect determine, or written statements explaining how the regulations were inappropriately applied to the POU. Commission staff may also submit evidence they wish the Commission to consider within 20 days after the appeal is filed. The Commission shall hear and decide the appeal at the next regularly scheduled business meeting that is at least 30 days after the appeal is filed. CMUA believes including this appeal approach, or a similar approach, is necessary to ensure that any POU deficiencies are correctly calculated and the regulations are appropriately applied.

### **III. CONCLUSION**

CMUA appreciates the opportunity to provide these comments and looks forward to continued collaboration with the Commission on this matter.

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<sup>14</sup> Draft Internal Regulations at Section 1396(e).

Dated: June 14, 2024

Respectfully submitted,

*/s/ Tony Braun*

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