

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



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Appeal of Clean Power Alliance of
Southern California from Citation No. E-
4195-82 issued on April 15, 2020 by
Consumer Protection and Enforcement
Division.

K. 20-05-006

**OPENING BRIEF OF
CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA**

Nancy S. Whang, Esq.
General Counsel
Clean Power Alliance of Southern California
555 W. 5th St., 35th Floor
Los Angeles, CA 90013
Tel. (213) 595-7818
Email: nwhang@cleanpoweralliance.org

Patrick Ferguson
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111
Tel. (415) 276-6500
Email: patrickferguson@dwt.com

Attorney for Clean Power Alliance of
Southern California

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Pursuant to the September 25, 2020 *E-Mail Ruling Setting Dates for Briefs and Prepared Testimony*, Clean Power Alliance of Southern California (“CPA”) submits this opening brief. On April 15, 2020, the Consumer Protection and Enforcement Division (“CPED”) of the California Public Utilities Commission (“Commission”) issued Citation E-4195-82 (“Citation”) regarding CPA’s Year-Ahead Resource Adequacy (“RA”) compliance showing for the 2020 RA year (“Year Ahead Showing”).¹

Pursuant to the Commission’s decisions and the RA Guide,² the numerical correction CPA made to its Year Ahead Showing is clearly a “minor error” for which enforcement and specified penalties are unwarranted. It is undisputed that CPA always had sufficient resources committed to the California Independent System Operator (“CAISO”) to meet its 2020 System RA obligations. The numerical error in the Year Ahead Showing did not affect compliance, did not result in the invalidation of any shown resources, did not require any additional procurement to fix, and caused absolutely no harm. CPED has acknowledged that enforcement of this type of

¹ CPA timely filed a notice of appeal on May 14, 2020. *See Notice of Appeal of Clean Power Alliance of Southern California for Citation No. E-4195-82* (“CPA Notice of Appeal”).

² CPUC, *2020 Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings* (“RA Guide”) (Issued October 17, 2019).

minor error is unprecedented. Accordingly, the Commission should exercise its discretion to dismiss the Citation.

I. FACTUAL AND PROCEDURAL BACKGROUND

The record in this proceeding is clear and the facts are not in dispute. On September 22, 2020, CPA and CPED (collectively, the “Joint Parties”) filed a *Joint Parties’ Report*, which set forth the undisputed facts that led to CPED’s issuance of the Citation. In addition, CPA is concurrently filing the *Prepared Testimony of Charles Grinstead* (“Grinstead Testimony”), which provides further narrative and evidentiary support for certain of the undisputed facts set forth in the Joint Parties Report.

As detailed in the Joint Parties’ Report and Grinstead Testimony, CPA timely filed its Year Ahead Showing on October 31, 2019, which demonstrated that CPA had exceeded its System RA obligations for 2020.³ Unfortunately, based on a confusing requirement with respect to the treatment of line losses and the planning reserve margin for third-party Demand Response resources, CPA listed the wrong RA values for the Demand Response resources (“DR Values”) it showed for System RA compliance.⁴

If the correct DR Values had been used at the time, CPA would still have exceeded its System RA obligations for 2020 based on the resources identified in the Year Ahead Showing. In addition, perhaps because of the confusion that LSEs experienced regarding the calculation of DR Values in past years, Energy Division subsequently modified the 2021 Year Ahead Showing

³ Joint Parties’ Report, ¶ 3.

⁴ Joint Parties’ Report, ¶¶ 4-5.

and RA Guide to account for line losses and the planning reserve margin associated with third-party DR resources in a more straightforward manner.⁵

On November 20, 2019, CPA filed its year ahead compliance filing with the CAISO. In the CAISO Year Ahead Filing, CPA confirmed: (a) all of the RA resources that CPA would use for 2020 RA compliance, (b) the total RA capacity (in MWs) of each resource, and (c) the months during 2020 in which the resources would be used to meet CPA's RA compliance obligations.⁶ By December 15, the CAISO performed a validation of all the resources listed in CPA's CAISO Year Ahead Filing. The entire amount of capacity (in MWs) for every RA resource that was ultimately listed in the March Revision (defined below) to CPA's Year Ahead Showing was reviewed and validated by the CAISO on December 15.⁷

Because CPA had exceeded its 2020 System RA obligations, in January 2020, CPA asked for Energy Division's permission to reduce the amount of RA capacity for certain shown resources so that CPA would be exactly 100% compliant with its 2020 System RA obligations and the excess resources could be used for intra-month substitution or potentially re-sold to other LSEs.⁸ CPA took this action to minimize the costs of RA compliance to its customers while still ensuring 100% compliance with all of its RA obligations.⁹ Given that the CAISO Year Ahead Filing was already validated, CPA and Energy Division agreed that any revisions to the CPUC Year Ahead Filing could not result in any changes to the CAISO Year Ahead Filing.¹⁰

⁵ On October 2, 2020, Energy Division provided the 2021 Final RA Guide and Templates to all LSEs via email. In this email, Energy Division explained that "The RA templates have been revised to account for third party DR resources, namely adding T&D loss factors and 15% PRM for system." See Grinstead Testimony, at 4; see also 2021 RA Guide at 30-31.

⁶ See Joint Parties' Report, ¶¶ 7-8; Grinstead Testimony, at 5.

⁷ See Joint Parties' Report, ¶¶ 8-9; Grinstead Testimony, at 5.

⁸ See Joint Parties' Report, ¶ 11; Grinstead Testimony, at 2 - 3.

⁹ See Grinstead Testimony, at 3.

¹⁰ Joint Parties' Report, ¶¶ 11-13; Grinstead Testimony, at 3.

CPA re-submitted its Year Ahead Showing to be exactly 100% compliant with its System RA obligations (the “January Revision”).¹¹ When reviewing the January Revision, Energy Division discovered the numerical error with respect to the DR Values.¹² Once the correct DR Values were used, CPA’s January Revision appeared to show a deficiency of a few MWs of System RA capacity in the months of May, July, August, and September 2020.¹³ After Energy Division notified CPA of the numerical error with respect to the DR Values, CPA promptly corrected the error and filed another revision to its Year Ahead Showing (“March Revision”).¹⁴

Because CPA had over-procured System RA for 2020, it was easy to correct this minor error. CPA adjusted the values it had entered for the DR resources, and then increased the volumes from a few of the resources it has already shown and committed to the CPUC and CAISO in the Year Ahead process.¹⁵ As documented in its Year Ahead Showing and the CAISO Year Ahead Filing, there was **never** any shortfall in CPA’s System RA compliance. For every System RA resource for which additional MWs were listed in the March Revision:

1. CPA had previously identified each of these resources in its Year Ahead Showing;
2. CPA had previously committed each of these resources to the CAISO in its CAISO Year Ahead Filing, in an amount (in MWs) that was equal to or greater than the amount of capacity identified in the March Revision; and
3. CPA had each of the resources under contract prior to filing its Year Ahead Showing on October 31, 2019, in an amount (in MWs) that was equal to or greater than the amount of capacity identified in the March Revision.

¹¹ See Joint Parties’ Report, ¶ 14; Grinstead Testimony, at 3 (Email from ED authorizing resubmissions)

¹² See Joint Parties’ Report, ¶¶ 11-13; Grinstead Testimony, at 3-4.

¹³ See Joint Parties’ Report, ¶ 14-15

¹⁴ See Joint Parties’ Report, ¶ 16-17; Grinstead Testimony, at 4.

¹⁵ See Joint Parties’ Report, ¶ 17; Grinstead Testimony, at 6.

CPA did not engage in any additional procurement in connection with the March Revision. CPA did not make any changes to its resource commitments to the CAISO in connection with the March Revision.¹⁶

II. ARGUMENT

A. CPED's Unprecedented Citation for a Minor Numerical Error is Contrary to CPUC Rules

The Commission's RA Guide sets forth two classes of errors that may occur with respect to LSEs' RA compliance filings: (1) "minor typographical and numerical errors", which are defined as "[s]imple typographical or numerical errors that do not affect compliance or do not invalidate resources";¹⁷ and (2) "substantive errors that may affect compliance", which are defined to include errors in which "removal of the capacity in question would leave the LSE without sufficient capacity committed to the CAISO" or when "LSEs do not make sufficient RA capacity available to the CAISO via an RA Filing or supply plan confirmation by the RA Filing due date."¹⁸

¹⁶ See Joint Parties' Report, ¶¶ 18; Grinstead Testimony, at 6.

¹⁷ RA Guide at 44 ("Minor Typographical and Numerical Errors: Simple typographical or numerical errors that do not affect compliance or do not invalidate resources sufficient to drop the LSE below RAR can be corrected by the LSE by submitting a corrected template to replace the original in its entirety; specific revisions must be noted in a cover letter. In the case of a supply plan mismatch or a scheduled outage that invalidates a portion of the LSE's capacity, if the supplier has submitted replacement capacity via a supply plan as of the RA Filing due date, the LSE may submit corrections to list the correct source of capacity via correction sheets.")

¹⁸ RA Guide, at 44 ("Substantive Errors that May Affect Compliance: Errors that are substantive and affect compliance, when removal of the capacity in question would leave the LSE without sufficient capacity committed to the CAISO (even in the event that the LSE otherwise controls the capacity but did not make it available to the CAISO via a RA Filing) to meet RAR. Substantive errors must be corrected via a complete refilling of the RA Filing (with cover letter that explains the errors and a new certification sheet). Additional procurement (even if the LSE already controls the capacity but not has made it available to CAISO via an RA filing) must be demonstrated via a corrected template and the LSE is to ensure that a revised supply plan documenting that additional procurement is filed with the CAISO by the supplier. Procurement deficiencies occur when LSEs do not make sufficient RA capacity available to the CAISO via an RA Filing or supply plan confirmation by the RA Filing due date).")

CPA's inadvertent use of incorrect DR Values in the Year Ahead Showing constitutes a minor numerical error because, consistent with the definition in the RA Guide, it: (a) did not "affect compliance", (b) did not "invalidate resources", and (c) did not require any additional procurement to fix. It is undisputed that at all times CPA had sufficient System RA committed to the CAISO to meet 100% of its 2020 compliance obligations. Even though the January Revision, when corrected to use the proper DR Values, appeared to show CPA out of compliance in several months, CPA was able to correct this error without any additional procurement or any change to the 2020 System resource commitments it previously made to the CAISO.

CPA's error does not meet the definition of a substantive error under the RA Guide. CPA committed sufficient resources to the CAISO in the CAISO Year Ahead Filing to meet all of its 2020 System RA obligations, irrespective of the minor error with respect to the DR Values of certain resources. Once the proper DR Values were listed on the Year Ahead Showing, there was never a need to adjust the System RA capacity that CPA had committed to the CAISO.

The RA Guide specifies that an "LSE may be subject to enforcement action for substantive errors,"¹⁹ but that corrections to address minor numerical errors should be made by submitting a corrected RA template.²⁰ CPED has confirmed that it has never previously received any case referrals from Energy Division involving an LSE making a minor typographical or numerical error with respect to its Year Ahead RA compliance filing.²¹ And there were no changes to the 2020 RA Guide with respect to the counting of DR resources which would have required the Commission to change its enforcement practices this year.

¹⁹ RA Guide at 40.

²⁰ See RA Guide at 43.

²¹ See Joint Parties' Report, ¶¶ 22-23.

Accordingly, the Citation should be dismissed because CPED's unprecedented enforcement action is contrary to the Commission's own policies set forth in the RA Guide.

B. The Commission Should Dismiss the Citation

In Resolution ALJ-382 (Yacknin), issued September 18, 2020, the Commission re-affirmed the legal standard used to consider the assessment of a violation of the Commission's RA rules.²² Pursuant to D.98-12-075, the Commission considers several factors when determining a penalty to be imposed for a regulatory violation: (1) the severity of the offense; (2) the conduct of the utility before, during, and after the offense; (3) the financial resources of the LSE; (4) the amount of the fine in relation to prior Commission decisions; and (5) the totality of the circumstances in furtherance of the public interest.²³ The primary factors the Commission considers are the severity of the offense and the conduct of the utility.²⁴

1. Severity of the Offense

CPA's error did not cause any harm at all. It does not pose harm to the integrity of the Commission's regulatory processes,²⁵ nor did it cause any harm to ratepayers.²⁶ CPA appreciates the importance of the Commission's RA program, and it takes seriously its commitment as an LSE to ensure the safety and reliability of California's electric grid. However, in this instance, CPA *exceeded* its 2020 System RA obligations. Had CPA been aware of the minor error with respect to the DR Values, it would not have made the January Revision to

²² Resolution ALJ-382 (Resolves the Appeal K.19-03-024 of Citation No. E-4195-0052 by San Jose Clean Energy), at 4-5.

²³ The Commission has consistently applied these five factors to all enforcement proceedings. *See* D.15-04-024, mimeo at 39-40.

²⁴ *See* D.98-12-075, mimeo at 7 and 35.

²⁵ *See* D.98-12-075, mimeo at 36.

²⁶ *See* D.03-05-033, mimeo at 7, 12.

remove certain resources so that it was exactly 100% compliant.²⁷ Most importantly, CPA always had sufficient RA resources committed to the CAISO to satisfy its 2020 System RA obligations.

2. Conduct of the LSE

In the months prior to the October 2019 Year Ahead Showing, CPA made extraordinary efforts to meet and exceed its System RA obligations for 2020. Prior to making any revisions to its Year Ahead Filing in January 2020, CPA sought and received permission from Energy Division to reduce the amount of RA capacity for certain shown resources so that CPA would be exactly 100% compliant with its 2020 System RA obligations and the excess resources could be used for intra-month substitution or potentially re-sold to other LSEs.²⁸ CPA took this additional action to help lower the RA costs for its customers while still remaining fully compliant with the Commission's RA rules. As soon as Energy Division made CPA aware of the minor error with respect to the DR Values, CPA promptly corrected the error and re-filed the RA template.

CPA suspects it is not the only LSE that had difficulty understanding how to account for the DR Values of third-party resources in the Year Ahead Showings. It is telling that Energy Division has recently revised the way in which DR Values are accounted for in the RA templates that will be used for future Year Ahead Showings,²⁹ presumably because LSEs were having difficulty with properly inputting such DR Values. While the confusing treatment of DR Values in the Year Ahead Showing does not excuse CPA's numerical error, CPA believes it should be factored into whether a citation is appropriate.

²⁷ See Grinstead Testimony, at 3.

²⁸ See Joint Parties' Report, ¶ 11; Grinstead Testimony, at 2-3.

²⁹ See Grinstead Testimony, at 4.

CPA's actions demonstrate that it takes its RA obligations seriously, is committed to ensuring full compliance with all of the Commission's ever-evolving RA rules, and strives to find the most cost-effective solutions for its customers.

3. Financial Resources of the LSE

CPA strives to provide clean energy and beneficial programs to its customers, many of whom have low or fixed incomes. CPA recognizes that Public Utilities Code § 380(e) requires the Commission to enforce RA requirements in a nondiscriminatory manner across all LSEs. However, in this instance, there was no error for which enforcement is appropriate, and thus CPA's financial resources should not be a significant factor.

4. Role of Precedent

The Commission's enforcement of this Citation would be totally unprecedented. CPED agrees that it has never before received an enforcement referral from Energy Division for this type of minor numerical error, and that there were no changes to the Commission's RA rules that would require such enforcement in this instance.³⁰

Enforcement of this Citation would directly contradict the guidance the Commission has set forth in the RA Guide with respect to minor vs. substantive errors, which could cause significant confusion among LSEs with respect to future compliance and compromise the integrity of the Commission's RA program.

5. Totality of the Circumstances

The purpose of the RA penalty structure is to encourage LSEs to comply with the RA program requirements.³¹ The Citation does not accomplish this purpose because CPA fully complied with the program requirements and made sufficient System RA capacity available to

³⁰ See Joint Parties' Report, ¶¶ 22-24.

³¹ See D.04-10-035, mimeo at 48.

the CAISO. Any fine associated with the Citation would penalize CPA's customers while providing no corresponding benefit. Based on the totality of the circumstances, the Citation should be dismissed.

III. CONCLUSION

For the reasons set forth above, the Commission should dismiss the Citation entirely and assess no penalty.

Respectfully submitted,

Nancy S. Whang, Esq.
General Counsel
Clean Power Alliance of Southern California
555 W. 5th St., 35th Floor
Los Angeles, CA 90013
Tel. (213) 595-7818
Email: nwhang@cleanpoweralliance.org

By: _____/s_____
Patrick Ferguson
Davis Wright Tremaine LLP
505 Montgomery Street, Ste 800
San Francisco, CA 94111
Tel. (415) 276-6500
Email: patrickferguson@dwt.com

Attorney for Clean Power Alliance of Southern
California

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