



July 14, 2026

**California Public Utilities Commission
Integrated Resource Planning Procurement Oversight and Compliance**

Submitted via e-mail to IRPdatarequest@cpuc.ca.gov

RE: ACP-California Informal Comments on IRP Procurement Compliance

Dear Energy Division Staff:

American Clean Power – California (“ACP-California”) appreciates the opportunity to provide informal comments in anticipation of the July 23, 2026 Workshop on the upcoming Procurement Compliance Staff Proposal Addressing Good Faith Effort and Net Cost of New Entry. ACP-California represents utility-scale solar, wind, geothermal, storage and transmission developers. ACP-California’s members are developing many of the projects supporting Integrated Resource Planning (“IRP”) procurement compliance claims of load-serving entities (“LSEs”).

ACP-California appreciates the opportunity to provide input on this important topic. The California Public Utilities Commission’s (“Commission” or “CPUC”) exercise of its prosecutorial discretion is a critical component of the state’s IRP and clean energy programs. The CPUC should endeavor to balance objectives of deterring noncompliance and minimizing procurement compliance costs. In many contracts, the costs of IRP penalties are passed through to the seller. Consequently, Power Purchase Agreement prices are often adjusted to account for the risk of penalties. Because of this dynamic, the CPUC should ensure it doesn’t assess penalties in ways that are duplicative of other, similar costs of non-compliance (e.g., Renewables Portfolio Standard (“RPS”) and Resource Adequacy (“RA”) penalties). The penalties should be applied as consistently and transparently as possible to encourage ongoing compliance. With this overarching objective in mind, ACP-California provides its feedback below on the Staff questions provided in Sheila Lee’s June 17, 2026 e-mail.

QUESTIONS

Section 1. Net Cone

Should a mechanism other than Net Cost of New Entry (CONE) be used to determine the penalty for procurement non-compliance? If yes, what mechanism?

As a general matter, the CPUC should endeavor to create rules that are consistently applied and provide certainty to regulated entities well in advance of their future application. The IRP procurement rules have been in place for several years and have already been accounted for in bilateral contracts. Changing the rules for procurement obligations that have already occurred or are about to become due risks disrupting contracts. If the CPUC makes fundamental changes to the penalty rules it should do so for future procurement obligations that are still the subject of ongoing contractual discussions (e.g., the 2029-2032 and later IRP procurement requirements).

ACP-California has long felt that the net-cone procurement structure imposes a significant deterrent to non-compliance but also risks over-penalizing LSEs for relatively small compliance shortfalls. Since these costs and risks must be accounted for in contracts, the current structure can lead to higher procurement costs. When an LSE is short on its IRP compliance for a resource that also provides RPS and RA value, the LSE is at risk of facing penalties across three different programs for the same capacity / energy.

On the other hand, there are aspects of the IRP penalty structure which fall short. The IRP penalty is assessed once and then once it is paid, the IRP procurement obligation for the tranche goes away, providing little incentives to LSEs to ensure the underlying project still gets built. We acknowledge the CPUC attempted to address these risks by allowing for bridging IRP procurement in certain scenarios. However, the requirements for long-term contracting of bridging resources can still pose challenges and the risk of the original project not being built is still a concern.

One way the Commission could address these procurement challenges would be to create a penalty structure that mirrors delay damage provisions in contracts. Delay damages are a type of liquidated damages that are commonly used in power contracting. Sellers are appropriately

incentivized to ensure that their projects meet deadlines, but there is typically no risk of losing the contract altogether due to a relatively short delay. This type of structure would ensure that projects that are ultimately needed for longer-term IRP targets still come online and without the risk of losing the project altogether due to delays. We also believe a liquidated damage structure that scales to the length of the delay might mitigate procurement compliance costs that have to be accounted for in the contract.

Should the penalty be proportionate to the Load Serving Entities (LSE's) load served so that its ratepayers are not disproportionately and inequitably affected? Explain.

Since procurement obligations are currently allocated on a load-share basis and penalties are proportional to the capacity for which the LSE is short, penalties are already proportionate to LSE size.

It is proposed to replace existing language that sets the procurement penalty amount (Net CONE) -- set at the price of a battery energy storage facility-- to a specific dollar amount. Is there a reason that a specific dollar amount should not be provided to replace Net CONE? If yes, explain why?

As an overarching principle, it is important to set the penalty price greater than the cost of compliance. The price of a battery energy storage facility can change over time. Setting a static figure would risk greater non-compliance rates when the costs of battery systems are greater than the administratively determined price, due to any number factors such as interest rates, tariffs, etc. The iterative updates to the CPUC's Avoided Cost Calculator ("ACC"), which determines the Net CONE figure, address this risk of changes in battery energy storages system development costs. However, the ACC is not generally well understood by market participants. Assuming the CPUC continues to rely on a Net CONE penalty structure, we encourage the Commission to publish the Net CONE figure on the IRP procurement webpage. The CPUC should publish the schedule for updating Net CONE and notify IRP parties when there are opportunities to comment on the updates to the Net CONE figure.

Should application of procurement penalties be determined annually following June 1st?

As noted in our response to the first question in Section 1, we believe that delay damages could strike a better balance between meeting the longer-term goals for new capacity

development and minimizing penalty risks / costs that must be accounted for in contracts. This structure would better ensure that projects that contribute to the IRP goals but are delayed by several months can still be brought online. We note that many causes of delay can be beyond the control of the project developer (e.g., network and interconnection facility upgrades) or the LSE (e.g., permitting delays, supply chain delays) and thus a penalty structure should incentivize on-time commercial operation while accommodating relatively minor delays.

Section 2. Good Faith Effort

With the implementation of the alternative compliance approach, it is proposed to sunset the “good faith effort” policy. Is there a need for a complementary policy for the existing alternative compliance approach? Why or why not?

ACP-California does not support sunseting the good faith effort policy. We acknowledge that the alternative compliance approach has provided an opportunity to bridge resources that are delayed for reasons outside the contracting parties’ control (e.g., transmission delays). However, the mechanism presumes that there are bridging resources available to the parties, and the bridging resources can be contracted on a long-term basis. This can be a very costly option for the contracting parties. The Commission should not presume that bridging will always be an option due to limits in resource availability at a reasonable cost. We therefore recommend retaining the good-faith effort policy as an option for LSEs. We believe this option is still an important component of the IRP procurement program, particularly for projects that are delayed for relatively short periods of time or for reasons that are outside the developers’ control.

Should “good faith effort” be defined? If yes, what should be the definition of “good faith effort”. Note: Any definition should be objective and measurable.

The Commission’s direction in D.21-06-035 provides a good framework, but lacks detail. ACP-California recommends further defining “good faith efforts” to ensure that LSE procurement activities align with expected project development and interconnection timelines such that ready projects are reasonably able to come online on time for standard compliance deadlines. Solicitations should enable contracting in time for resources to meet deliverability allocation windows as part of the California Independent System Operator’s (“CAISO”) interconnection process. For example, Cluster 14 resources have a final opportunity to retain Full Capacity Deliverability Status in March 2027, but can only do so by providing an executed

Power Purchase Agreement. LSEs should also solicit bids for sufficient quantities of the right categories of resources to meet their procurement obligations. We encourage the CPUC Staff to develop guidance language that provides a non-exclusive list of specific scenarios where an LSE would or would not be able to demonstrate good faith efforts. For example, an LSE with a project delayed due to a transmission owner's delay in constructing deliverability upgrades should meet the good faith effort definition.

With the implementation of the alternative compliance approach, please explain why the “good faith effort” policy may still be necessary. Provide an example scenario.

Please see our response to the first question of Section 2. One example where the good faith effort policy is still needed is when there is a relatively short delay in a project that has met major milestones and is likely to come online within a year of its original Commercial Operations Date. In this scenario, it may be cost prohibitive to contract for bridge resources due to the long-term contracting requirement for bridge resources. The underlying project will still make contributions to the IRP goals (subject to a short delay). In this example, the good faith effort policy would further the long-term IRP procurement goals and reduce costs to consumers. When specific resource categories are ordered in IRP (such as clean, firm and long-duration storage), the Commission has found value in bringing online those specific resource types, rather than “generic” bridge IRP resources. At the same time, these resources will naturally be more limited in number and location, reducing opportunities for LSEs to find suitable replacement resources meeting the same requirements in a short period of time. Maintaining the “good faith efforts” policy provides appropriate flexibility to bring diverse resources online. Moreover, compliance requirements and penalties in the RA program would still be in place to shore up near-term reliability impacts of the delay of the project.

Section 3. Definition of “Online”

The proposed definition of online is “the resource is delivering power to the grid and contracted to deliver by the specified compliance tranche date.” Other than Commercial Operations Date (COD), are there any other determinants that meet the proposed definition?

The CPUC IRP procurement rules require a resource to be eligible to meet RA compliance requirements. Some LSEs have interpreted this to mean that the resource must be online and available to be shown in the RA supply plan 45 days before the applicable RA month.

This can be a challenge for new resources that come online after 45 days and before the start of the RA month. The RA programs allows LSEs to count resources that come online in this timeframe through a manual adjustment to the supply plan after the 45-day validation period. The IRP program should provide similar flexibility and make clear that a resource that is online and deliverable by the start of the RA month can be counted for the IRP compliance target, irrespective of whether the LSE showed the resource on its month-ahead supply plan.

Can a resource receive a Commercial Operations for Market (COM) notice without ever receiving a COD notice? Please explain.

Resources that issue COM notices are typically fully deliverable and eligible to be counted for RA. Often, the COM status indicates that only a portion of the overall resource is available to the grid operator (e.g., a project built in phases). If a COM tranche satisfies the LSE's IRP compliance requirements (or a portion of them), it should be eligible for IRP compliance even though the full capacity or additional phases of the resource may still be under development.

What modifications or upgrades can or should occur that would result in incremental capacity of a resource? Is there anything else other than physical modifications or upgrades that can result in an increase in a resource's deliverability capabilities?

ACP-California has long felt that the Commission's rigid implementation of baseline resource list rules has precluded the development of repowered projects. There are opportunities for repowers and part replacements that can provide ratepayers with incremental clean capacity at existing sites. By utilizing existing infrastructure, these projects can provide a very cost-effective option for ratepayers compared to developing new, green-field clean capacity. The Commission should encourage this type of clean capacity development in addition to new capacity development in its future procurement designs. One way the Commission could encourage these development opportunities is by allowing LSEs or market participants to propose adjustments to the baseline resource list (e.g., through an advice letter filing). The advice letter would need to demonstrate that the repower, addition of storage, or parts replacement would make incremental capacity or greater annual energy production available to the grid.

When looking at how energy and storage resources can be paired, are there negative impacts to a resource having intermittent pairing with an energy resource that does not fully span the contract term of the storage? Explain.

No response.

Section 4. Capacity Factor

What engineering assessment calculation methods can be used by an LSE to demonstrate an 80% capacity factor? Explain specific calculation methods and how this would be demonstrated.

The 80% capacity factor can be demonstrated through standard engineering methods which qualify a resource at the time of contract execution. The Commission should not impose an annual operational performance requirement but should instead validate the eligibility of a resource once, similar to typical net qualifying capacity accounting.

Should the 80% annual capacity factor requirement be determined by: (a) An average annual capacity factor of 80% across the entire term of the contract or (b) An annual capacity factor of 80% in at least the first year of a contract? Explain.

When the Commission initially reviews the contract and determines compliance with the 80% capacity factor, we recommend assessing the 80% capacity factor as an expected average annual performance across the contract term.

Should there be a different definition for capacity factor? Why?

No Response.

Due to the Long Lead Time (LLT) requirement for the ratio of the actual amount of electrical power produced by a generating unit and the required continuous generation at full maximum discharge for 24 hours a day, 7 days a week, over a year, should there be a varied definition of capacity factor for LLT resources?

No Response.

Section 5. Resource Delays

If a resource is delayed or contracted with a later online date and paired with a bridge or alternative compliance pathway, should the LSE get to apply the selected tranche Effective

Load Carrying Capability (ELCC), or should they be required to use the later ELCC associated to the online date?

Since the LSE is still using the delayed/contracted resource to meet the required online date, the ELCC for the selected tranche should apply. This approach would best align with the contracting for the resource, which in most cases would assume that the ELCC for the selected tranche would apply. If the resource is re-contracted to a different LSE who claims it for a later compliance tranche, the ELCC for the later tranche should apply.

5.2 How should resource delay be defined? What evidence can be provided to prove a resource delay?

A delay is anything that changes the milestone for a resource beyond the COD originally set forth in the contract. Correspondence and official notices from the seller can be provided to prove a resource delay. Resource delays in CAISO are also documented and considered by the grid operator (e.g., the CAISO study report responding to a Material Modification Assessment (“MMA”) request, or updated CODs reported in the Transmission Development Forum for major network upgrades). However, the MMA study may not be available for non-CAISO resources and the LSE may need to rely on disclosures from the seller for non-CAISO projects.

5.3 If a resource is delayed and a long-term contract is not procured, how should the ELCC for the initial tranche be applied?

Under the current IRP procurement rules, the LSE would have an unsatisfied IRP procurement obligation in this scenario because there is no long-term bridge contract in place. Consequently, there would be no ELCC to apply. If the Commission were to allow for a delay through a showing of good-faith efforts, the ELCC for the original procurement tranche should apply to the delayed resource.

5.4 Should the alternative compliance mechanism cure a deficiency gap for a resource that is contracted for a later date, or should the alternative compliance mechanism only close the gap if a resource was originally contracted for an earlier online date?

If the originally contracted resource comes online and the bridge resource satisfies a later compliance obligation, the LSE should be able to count both resources towards its compliance obligations.

5.5 What documentation should be required to demonstrate a resource was originally intended for an earlier contract date other than an executed contract? Please explain.

The CPUC requires LSEs to file Resource Data Templates showing their contracted resources for upcoming procurement tranches. These filings (in conjunction with the executed contracts) are the best source of information for determining which resources were intended for an earlier contract date.

If a resource is delayed, can an LSE negotiate language that requires the delivery period be extended to maintain a 10- year tenure?

This will depend on the project and its ability to make commitments beyond an initial 10-year term. As a general matter, many new projects can be contracted beyond a 10-year term.

Section 6. Issuance of Citations

Since citations are currently issued publicly, is there a reason that procurement citations should not include the following information: Citation Number, LSE, Date Notified, Date Issued, LSE CPUC ID, LSE Type, Specified Violation, Citation Amount, Pay Status, Appeal Status, Appeal Number? If yes, please explain.

No comment.

Should citations be issued annually? Why or why not?

No comment.

What timeframe should be implemented for issuance of procurement citations?

No comment.

Section 7. Aligning Integrated Resource Planning (IRP), Resource Adequacy (RA), and Renewables Procurement Section (RPS)

7.1 Given that IRP, RA, and RPS have different goals and mandates, are there opportunities to align the three programs? Please explain.

ACP-California has long advocated for aligning the planning requirements of these three programs. Currently, the programs require distinct products for compliance. Often a single generation or storage project will satisfy some or all of the requirements and a delay in the project can put the LSE at risk of non-compliance across more than one of the three programs. We encourage the CPUC to account for the risk of penalizing a single delay in a resource online date two or three times. This would amount to double jeopardy. The Commission should exercise its prosecutorial discretion to ensure that an LSE is only penalized once for a delay in a resource.

We also encourage the Commission to seek alignment in the inputs and assumptions (“I&A”) across the IRP and RA programs by incorporating new pricing information into assumptions as contracts are executed, and by providing additional opportunities for stakeholder input and provision of data in the I&A process.

In addition, as described above, we recommend that “good faith efforts” continue to provide compliance flexibility, while ensuring that LSEs’ procurement activities align with the timelines for interconnection and deliverability allocation, necessary for both IRP and RA programs. In the past, there have been considerable gaps in time between the deliverability affidavit deadlines at CAISO and LSE contracting, leaving many projects without contracting opportunities when their affidavits are due. We encourage the CPUC to coordinate these timelines by issuing predictable, advanced procurement directives that coincide with the deliverability affidavit deadlines.

7.2 What burdens need to be overcome to align IRP, RA, and RPS?

From a compliance/enforcement perspective the primary burden is aligning the penalty timeframes. IRP penalties are issued after the showing deadline. RA penalties are issued after the RA showing deadlines. RPS penalties are issued after the need of a multi-year compliance period. Coordinating these three timeframes would require the CPUC to update the RA and RPS enforcement procedures to create an exception to formulaic penalties when an IRP penalty has already been issued.

7.3 Are their stakeholder time constraints inherent in an effort to align IRP, RA, and RPS? Please explain.

We encourage the Commission to evaluate opportunities for alignment in each of the three procurement proceedings as part of the normal, iterative rulemaking cycles. We do not anticipate that ongoing discussions of alignment would pose a time constraint for stakeholders who regularly engage in these rulemakings.

Conclusion

ACP-California appreciates Staff's continued work to improve the IRP compliance structure and supports a transparent, durable process that incentivizes compliance without undue costs to contracting parties and ratepayers. We look forward to continued engagement with Staff and stakeholders on these issues.

Respectfully submitted,

/s/

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