



The Public Advocates Office's Informal Responses to the Commission's Procurement Compliance Staff Proposal Workshop Questions

Rulemaking 25-06-019

Submitted by	Organization	Date Submitted
Ryan Saraie Helena Oh Christian Lambert Analysts Phone: (415) 703-1457 Email: Ryan.Saraie@cpuc.ca.gov	Public Advocates Office - California Public Utilities Commission 505 Van Ness Avenue San Francisco, CA 94102	July 14, 2026

I. INTRODUCTION

The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits these informal responses to the California Public Utilities Commission's (Commission or CPUC) Procurement Compliance Staff Proposal Workshop Questions, submitted to the Rulemaking (R.) 25-06-019 service list on June 17, 2026. Cal Advocates provides responses to 9 of the Commission's 27 questions.

Cal Advocates provides the following recommendations:

- Question 1.1: The Commission should continue to use the Net Cost of New Entry (CONE) compliance mechanism, and base Net CONE penalties on 4-hour lithium-ion battery or 8-hour lithium-ion battery resource costs.
- Question 1.2: The Commission should not adjust integrated resource planning (IRP) compliance penalties on a dollar-per-kilowatt-month (\$/kW-mo) basis proportionate to each load serving entity's (LSE) load served.
- Question 1.3: The Commission should not adopt a penalty structure set at a specific dollar amount that is unrelated to the Net CONE.

- Question 1.3: Regardless of whether the Commission establishes penalties for IRP compliance at a specific dollar amount, the Commission should set IRP compliance penalties at a higher value than current Resource Adequacy (RA) deficiency penalties.
- Question 5.1: If a resource is delayed or contracted with a later online date and paired with a bridge or alternative compliance pathway, the Commission should not require the LSE offtaker of that resource to use the later Effective Load Carrying Capability (ELCC) associated with the online date.
- Question 5.3: If an LSE does not secure a long-term contract when a resource is delayed, then the ELCC for that tranche should still apply to that delayed resource if the LSE plans to use that delayed resource to qualify for that initial procurement tranche.
- Question 5.4: LSEs should use the alternative compliance mechanism to address deficiency gaps for resources that were originally contracted for earlier online dates.
- Question 6.2: The Commission should issue citations on an annual basis.
- Question 6.3: The Commission should apply citations on a backward-looking basis, after LSEs have shown that they have not met existing procurement requirements.
- Question 7.1: The Commission should address the general alignment of the IRP, RA, and Renewables Portfolio Standard (RPS) programs in the Commission's final decision on the Reliable and Clean Power Procurement Program (RCPPP).

II. DISCUSSION

A. Question 1.1: Should a mechanism other than Net CONE be used to determine the penalty for procurement non-compliance? If yes, what mechanism?

The Commission should continue to use the Net CONE compliance mechanism, and base Net CONE penalties on 4-hour lithium-ion battery or 8-hour lithium-ion battery resource costs. These resource types continue to predominate the California Independent System Operator Corporation (CAISO) interconnection queue and therefore represent the likeliest proxy resource types for near-term to mid-term procurement.

The Commission currently estimates low ELCC percentages in future years for a variety of IRP resources, including not only utility-scale solar and in-state wind, but also 4-hour lithium-

ion battery storage and 8-hour lithium-ion¹ battery storage.² Over time, the declining ELCC levels of 4-hour lithium-ion battery storage³ and 8-hour lithium-ion battery storage will cause LSEs to procure larger and larger volumes of nameplate battery capacity, to achieve the same volume of Net Qualifying Capacity (NQC). The Net CONE can keep pace with this effect if the Commission continues to include an ELCC adjustment that causes the penalty to scale upwards as the ELCC levels of 4-hour lithium-ion batteries and 8-hour lithium-ion batteries decline.⁴

However, these ELCC decreases will cause declining cost-effectiveness due to the need to procure correspondingly larger amounts of nameplate battery capacity. In turn, this decreasing cost-effectiveness will likely cause the LSEs to seek alternative resource types so long as the market is able to supply those alternatives. Therefore, the Commission should track market conditions on an ongoing basis, conduct additional record development, and update the penalty methodology as needed.

B. Question 1.2: Should the penalty be proportionate to the LSE's load served so that its ratepayers are not disproportionately and inequitably affected? Explain.

The Commission should not adjust IRP compliance penalties on a \$/kW-mo basis proportionate to each LSE's load served. The Commission set LSE procurement requirements in

¹ 2024 – 2026 Integrated Resource Planning (IRP), Inputs & Assumptions, February 2026 at 160. Available at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltp/2024-2026-irp-cycle-events-and-materials/2025_inputs_and_assumptions_report_20260210.pdf. The Commission assumes 8-hour battery storage uses lithium-ion technology.

² Reliability Filing Requirements for Load Serving Entities' 2024-26 Integrated Resource Plans – Results of Marginal ELCC Studies, February 2026 at slide 31. Available at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltp/2024-2026-irp-cycle-events-and-materials/reliability-filing-requirements_lses-2024-26_irp-plans_20260210.pdf.

³ Decision (D.) 21-06-35, *Decision Requiring Procurement to Address Mid-Term Reliability (2023-2026)*, June 24, 2021, Finding of Fact 26 at 89; filed in R.20-05-003, *Order Instituting Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes*. The Commission currently sets the Net CONE level as the cost of new entry for battery storage resources with energy market and ancillary services revenues taken into account.

⁴ Lumen Energy Strategy, *California Public Utilities Commission Energy Storage Procurement Study*, May 31, 2023 at 74. Available at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/energy-storage/2023-05-31_lumen_energy-storage-procurement-study-report.pdf. Under the direction of D.13-10-040, Lumen Energy Strategy produced the CPUC Energy Storage Procurement Study, which includes discussion of the ELCC adjustment mechanism in the Net CONE methodology.

D.21-06-035,⁵ D.23-02-40,⁶ and D.26-02-057⁷ based on each participating LSE's share of peak load. This equitably scales each LSE's procurement obligation and penalty exposure to the LSE's peak load share. For example, an LSE with a higher peak load share could face higher total penalties from having a larger contract portfolio, as the given LSE could be subject to a higher megawatt (MW) shortfall. Therefore, the Commission does not need to establish different penalty amounts for LSEs based on load share.

C. Question 1.3: 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?

The Commission should not adopt a penalty structure set at a specific dollar amount that is unrelated to the Net CONE. The basic logic of the Net CONE penalty is that the Net CONE is the penalty amount at which an LSE is indifferent between the penalty and the assumed cost of capacity. If the Commission sets the penalty at an alternative specific dollar amount that turns out to be lower than the Net CONE, then the LSEs will face higher costs to comply with the Commission's procurement orders, compared to the cost of taking the penalty. Such a penalty structure would disincentivize LSE procurement compliance and therefore should be avoided.

Regardless of whether the Commission establishes penalties for IRP procurement compliance at a specific dollar amount, the Commission should set IRP procurement compliance penalties at a higher value than current RA deficiency penalties. Relatively higher IRP procurement penalty amounts will encourage LSEs to better plan for potential contract delays and/or terminations. Additionally, RA penalty price levels do not accurately reflect the long-term costs of the new resources that LSEs must procure to meet their IRP procurement requirements. The Commission calculates average 2030 levelized fixed costs for utility-scale

⁵ D.21-06-035 at 53.

⁶ D.23-02-040, *Decision Ordering Supplemental Mid-Term Reliability Procurement (2026-2027) and Transmitting Electric Resource Portfolios to California Independent System Operator for 2023-2024 Transmission Planning Process*, February 23, 2023 at 30; filed in R.20-05-003.

⁷ D.26-02-057, *Decision Requiring 2029-2032 Electric Resource Procurement and Transmitting Portfolios for 2026-2027 Transmission Planning Process*, February 26, 2026, Ordering Paragraph (OP) 6 at 145; filed in R.25-06-019, *Order Instituting Rulemaking to Continue Oversight of Electric Integrated Resource Planning and Procurement Processes*.

solar at \$11.25/kW-mo,⁸ in-state wind at \$14.42/kW-mo,⁹ 4-hour lithium-ion battery storage at \$11.33/kW-mo,¹⁰ and 8-hour lithium-ion battery storage at \$18.92/kW-mo¹¹ (in 2024 dollars). In contrast, RA penalty rates range from \$3.33/kW-month to \$8.88/kW-mo and can double or triple if an LSE repeatedly fails to comply with RA requirements.¹² Any penalty should not only keep pace with the nominal, long-term costs of new resources, but should also include an ELCC adjustment, so that the penalty scales upwards as a resource type's ELCC declines; see Cal Advocates' response to Question 1.1 for more detail.

D. Question 5.1: 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 ELCC, or should they be required to use the later ELCC associated to the online date?

If a resource is delayed or contracted with a later online date and paired with a bridge or alternative compliance pathway, the Commission should not require the LSE offtaker of that resource to use the later ELCC associated with the online date. LSEs should apply the ELCC associated with the initial tranche if they intend to use the delayed resource to meet their procurement obligation for that initial tranche. While an LSE can use an alternative compliance pathway to cover any delays in online dates, the LSE may not have necessarily procured a new resource to cover the delay. The modeling that informs marginal ELCC values is based on

⁸ CPUC Resource Costs and Build Workbook – 2026-2027 TPP (CPUC IRP RC&B – 2026-2027 TPP Workbook). Available at: <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power-procurement/long-term-procurement-planning/2024-27-irp-cycle-events-and-materials/assumptions-for-the-2026-2027-tpp>. \$11.25/kW-mo is the average of the levelized fixed costs of Pacific Gas and Electric Company (PG&E) Kern Solar, Southern California Edison Company (SCE) Eastern Solar, PG&E Greater Bay Area (GBA) Solar, PG&E Fresno Solar, SCE Northern Solar, San Diego Gas & Electric Company (SDG&E) Imperial Solar, PG&E North of Greater Bay Area (NGBA) Solar, SCE North of Lugo (NOL) Solar, SCE East of Pisgah (EOP) Solar, SCE Metro Solar, SCE Arizona Solar, and SDG&E Arizona Solar with PTC benefits.

⁹ CPUC IRP RC&B – 2026-2027 TPP Workbook. \$14.42/kW-mo is the average of the levelized fixed costs of SCE Northern Wind, SCE EOP Wind, SCE Eastern Wind, PG&E Kern Wind, SDG&E Imperial Wind, PG&E NGBA Wind, SCE NOL Wind, PG&E GBA Wind, and SDG&E Baja California Wind with PTC benefits.

¹⁰ CPUC IRP RC&B – 2026-2027 TPP Workbook. \$11.33/kW-mo is the levelized fixed cost of 4-hour lithium-ion battery storage with PTC benefits.

¹¹ CPUC IRP RC&B – 2026-2027 TPP Workbook. \$18.92/kW-month is the levelized fixed cost of 8-hour lithium-ion battery storage with PTC benefits.

¹² 2026 Resource Adequacy and Slice of Day Guide, September 23, 2025 at 66. Available at: <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/resource-adequacy-homepage/resource-adequacy-compliance-materials/guides-and-resources/2026-ra-slice-of-day-filing-guide.pdf>.

assumptions regarding what the CAISO resource portfolio will comprise in each future study year.¹³ A key modeling assumption is projected LSE procurement additions pursuant to the CPUC's procurement orders.¹⁴ If marginal ELCCs are fixed for a given compliance period, absent an alternative new resource to cover the delay, the more appropriate ELCC value to use for a delayed resource is the ELCC value associated with the year for which the LSE wants to use the resource to satisfy its procurement obligation.

E. Question 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?

If an LSE does not secure a long-term contract when a resource is delayed, then the ELCC for that tranche should still apply to that delayed resource if the LSE plans to use that delayed resource to qualify for that initial procurement tranche. Like the scenario in which a resource is delayed and paired with an alternative compliance pathway, the LSE should use the initial tranche ELCC for the delayed resource if the LSE plans to count that resource toward meeting its initial tranche procurement obligation. If the LSE no longer plans to use that delayed resource to meet its initial tranche procurement obligation and does not secure another long-term contract with another resource, then the LSE could be deficient for that initial procurement tranche and face the risk of incurring a penalty. If the LSE faces a resource delay and the LSE does not procure a new resource in its stead, then the ELCCs for subsequent years may not adequately reflect the value of an incremental resource.¹⁵ Therefore, the LSE should use the initial tranche ELCC for the delayed resource if the LSE is planning to use that delayed resource to meet its initial tranche procurement obligation.

F. Question 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?

LSEs should use the alternative compliance mechanism to address deficiency gaps for

¹³ *Incremental ELCC Study for Mid-Term Reliability Procurement (January 2023 Update)*, Prepared by Astrape Consulting and Energy + Environment Economics for the California Public Utilities Commission, January 2023 (2023 ELCC Study) at 15 and 35. Available at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltrp/20230210_irp_e3_astrape_updated_incremental_elcc_study.pdf.

¹⁴ 2023 ELCC Study at 15.

¹⁵ See Cal Advocates' response to Question 5.1.

resources that were originally contracted for earlier online dates. LSEs would still be able to use the alternative compliance mechanism if a resource that is contracted for a later date is still delayed as the compliance online date nears.

G. Question 6.2: Should citations be issued annually? Why or why not?

The Commission should issue citations on an annual basis. An annual IRP compliance penalty requirement is sufficient to penalize LSEs that have not met their required share of IRP procurement need. Additionally, an annual citation frequency provides LSEs more time to identify resources at lowest cost to ratepayers. If the Commission imposes a more frequent citation cadence, LSEs would be more likely to procure higher-cost resources to avoid the risk of noncompliance to the detriment of their ratepayers.

H. Question 6.3: What timeframe should be implemented for issuance of procurement citations?

The Commission should apply citations on a backward-looking basis, after LSEs have shown that they have not met existing procurement requirements. In order to provide LSEs sufficient flexibility to meet impending requirements, the Commission should not implement a forward-looking penalty mechanism. In the event an LSE is deficient for multiple IRP requirements, the Commission should apply citations for each requirement at the same time.

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

The Commission should address the general alignment of the IRP, RA, and RPS programs in the Commission's final decision on the RCPPP. Cal Advocates previously recommended that the Commission extend LSEs' system RA requirements from one-year-ahead to two-years-ahead.¹⁶ Cal Advocates also recommended that the Commission establish a mass-based greenhouse gas compliance program, based on the Clean System Power Calculator.¹⁷ This mass-based greenhouse gas compliance program would be forward-looking and therefore

¹⁶ Cal Advocates, *Comments of the Public Advocates Office on Administrative Law Judge's Ruling Seeking Comments on Reliable and Clean Power Procurement Program Staff Proposal*, July 15, 2025 (Cal Advocates' RCPPP Comments) at 12-13; filed in R.20-05-003.

¹⁷ Cal Advocates' RCPPP Comments at 34-38.

complementary to the backward-looking RPS program.¹⁸

Cal Advocates may provide additional comments on programmatic alignment in response to the June 23, 2026, *Administrative Law Judge's Ruling Seeking Comments on Additional Proposal for a Reliable and Clean Power Procurement Program* (ALJ Ruling), filed in R.20-05-003. Cal Advocates generally agrees with the ALJ Ruling's premise that programmatic alignment is not necessary for the success of the RA and RCPPP programs.¹⁹ Furthermore, as the ALJ Ruling describes, parties' rationales for additional programmatic alignment generally reflect administrative concerns, such as the simplicity of LSE procurement,²⁰ rather than compelling evidence on the ratepayer costs and benefits of different options for programmatic alignment.

III. CONCLUSION

The Commission should adopt Cal Advocates' recommendations on the Procurement Compliance Staff Proposal Workshop Questions. Please contact Ryan Saraie at Ryan.Saraie@cpuc.ca.gov with any questions regarding these comments.

¹⁸ In addition, procedural alignment of the RPS program with the RCPPP may be limited by statutory requirements for Commission review of annual investor-owned utility RPS procurement plans; see California Public Utilities Code Section 399.13(a)(1).

¹⁹ ALJ Ruling at 4.

²⁰ ALJ Ruling at 3.