SENATE COMMITTEE ON ENERGY, UTILITIES AND COMMUNICATIONS
Senator Steven Bradford, Chair
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SUBJECT: Energy

DIGEST: This bill makes numerous changes to electricity policy, most notably, authorizes the Department of Water Resources (DWR) to serve as a central procurement entity to procure energy resources in order to help the state meet its renewable and zero-carbon energy resources and reliability goals. This bill also includes numerous related and additional provisions.

ANALYSIS:

Existing law:

1) Establishes the California Public Utilities Commission (CPUC) with jurisdiction over all public utilities, including electrical and gas corporations. Grants the CPUC certain general powers over all public utilities, subject to control by the Legislature. (Article XII of the California Constitution)

2) Establishes the DWR to manage the state's water supply. (Water Code §100 *et seq.*)

3) Establishes the State Energy Resources Conservation and Development Commission, also known as the California Energy Commission (CEC) and requires the CEC to assess trends in energy consumption and analyze the social, economic, and environmental consequences of these trends. (Public Resources Code §25200 *et seq*.)

4) Establishes the California Independent System Operator (CAISO) as a nonprofit public benefit corporation, and requires the CAISO to ensure the efficient use and reliable operation of the electrical transmission grid consistent with the achievement of planning and operating reserve criteria, as specified. (Public Utilities Code §345 *et seq.*)

5) Requires the CPUC, in consultation with the CAISO, to establish resource adequacy (RA) requirements for all load-serving entities (LSEs), including community choice aggregators (CCAs) and electric service providers (ESPs). Requires the RA program to achieve certain objectives, including maximizing the ability of CCAs to determine the generation resources used to serve their customers. Requires the CPUC to determine and authorize the most efficient and equitable means for achieving certain goals, including meeting the RA requirement objectives, ensuring that CCAs can determine the generation resources used to service their customers, and minimizing the need for backstop procurement by the CAISO. (Public Utilities Code §380)

6) Authorizes the CPUC to fix the rates and charges for every public utility and requires that those rates and charges be just and reasonable. (Public Utilities Code §451)

7) Establishes a renewables portfolio standard (RPS) and requires all retail sellers, including investor-owned utilities (IOUs), ESPs, and CCAs, to procure a minimum quantity of electricity products from eligible renewables energy resources, as defined, so that total kilowatt hours of those products sold to their retail end-use customers achieves 25 percent of retail sales by December 31, 2016, 33 percent by December 31, 2020, 44 percent by December 31, 2024, 52 percent by December 31, 2027, and 60 percent by December 31, 2030. (Public Utilities Code §399.15)

8) Requires the CPUC to identify a diverse and balanced portfolio of resources needed to ensure a reliable electricity supply that provides optimal integration of renewable energy in a cost-effective manner as part of the integrated resource planning (IRP) process. (Public Utilities Code §454.51)

9) Requires the CPUC to adopt a process for each electrical corporation, ESP or CCA to file an IRP and a schedule for periodic updates to the plan, and to ensure that LSEs meet other specified requirements. (Public Utilities Code §454.52)

10) Establishes the policy of the state that eligible renewable energy resources and zero-carbon resources supply 90 percent of all retail sales of electricity to California end-use customers by December 31, 2035, 95 percent of all retail sales of electricity to California end-use customers by December 31, 2040, 100 percent of all retail sales of electricity to California end use customers by December 31, 2045. (Public Utilities Code §454.53)

11) Requires that the IRP of each LSE contribute to a diverse and balanced portfolio of resources needed to ensure a reliable electricity supply that provides optimal integration of renewable energy resources in a cost-effective manner, meets the emissions reduction targets for greenhouse gases (GHG) established by the California Air Resources Board (CARB) for the electricity sector, and prevents cost shifting among LSEs. (Public Utilities Code §454.54)

12) Requires each electric publicly owned utility (POU) serving end-use customers to prudently plan for and procure resources that are adequate to meet its planning reserve margin and peak demand and operating reserves, sufficient to provide reliable electric service to its customers. (Public Utilities Code §25704.5)

13) Prohibits an electrical IOU from beginning the construction of a line, plant, or system, or of any extension thereof, without having first obtained from the CPUC a certificate that the present or future public convenience and necessity require or will require its construction, as specified. Under existing law, the extension, expansion, upgrade, or other modification of an existing electrical transmission facility, including transmission lines and substations, does not require a certificate that the present or future public convenience and necessity requires or will require its construction. (Public Utilities Code §1001)

14) Establishes the Electricity Supply Strategic Reliability Reserve Program (ESSRRP) and Fund at the DWR and continuously appropriates moneys in the fund to DWR for purposes of implementing projects, purchases, and contracts to carry out specified purposes, constructing, owning, and operating, or contracting for the construction and operation of, contracting for the purchase of electricity from, or financing through loans, reimbursement agreements, or other contracts actions to secure resources for summer reliability or to preserve the option to extend the life of specified facilities, and reimbursing electrical corporations for the value of imported energy or import capacity products that were delivered or capable of being delivered between July 1, 2022, and on or before October 31, 2023, and were procured at above-market costs or in excess of procurement authorizations set by the CPUC and above the requirements needed to serve the electrical corporation's bundled customers in support of summer electric service reliability. (Water Code §80700 *et seq.*)

15) Requires the CEC to adopt a biennial integrated energy policy report containing certain information, including an overview of major energy trends and issues facing the state. (Public Resources Code §25300 *et seq*.)

16) Establishes the Voluntary Offshore Wind and Coastal Resources Protection Program and Fund, administered by the CEC to support state activities that complement and are in furtherance of federal laws related to the development of offshore wind facilities. Requires the CEC to award and allocate moneys under the program for various purposes. Authorizes the CEC to accept federal and private funding for the purposes of the program. (Public Resources Code §25992.10 and §25992.20)

This bill:

1) Defines "diverse clean energy resources" to mean:

   a) A new resource procured by DWR that meets all of the following requirements:
      i) The resource directly supports attainment of the state's goal to achieve 100 percent zero-carbon and renewable energy resources by 2045, without increasing reliance on the state's dependence on any fossil fuel-based resources.
      ii) The CPUC determines the resource to not be under contract at sufficient levels as shown in LSEs' most recent individual IRPs submitted to and reviewed by the CPUC to achieve SB 100 (De León, Chapter 312, Statutes of 2018) goals.
      iii) The resource has a construction and development lead time of at least five years.
      iv) The resource does not generate electricity using fossil fuels or fuels derived from fossil fuels.
      v) The resource does not use combustion to generate electricity (except ancillary and necessary to facility geothermal electricity generation).

   b) Authorizes a pumped hydroelectric facility to qualify as a diverse clean energy resource if it does not exceed 500 megawatts (MW) and has been directly appropriated funding by the state before January 1, 2023.

2) Requires that the portfolio of resources identified by the CPUC, as part of the IRP process, ensures a reliable electricity supply that also provides optimal integration of resource diversity in a cost-effective manner. Requires the CPUC to use the portfolio to establish procurement requirements to achieve SB 100 goals, in addition to the state's GHG reduction goals.

3) Requires the CPUC to ensure the net costs of any diverse resources procured by electric IOUs to satisfy the IRP identified need are allocated on a nonbypassable basis.

4) Clarifies that all costs resulting from nonperformance to satisfy the need are borne by the LSE that failed to perform, instead of solely the electric IOU or CCA.

5) Requires the CPUC, on or before September 1, 2024, and consistent with the IRP process and schedule, to determine if there is a need for the procurement of diverse clean energy resources, as defined, requires the CPUC to specify the diverse clean energy resources that should be procured to meet that need, and authorizes the CPUC, within six months of making that determination, to request the DWR to procure those specified resources that meet the portfolio of resources.

6) Authorizes the DWR to procure those resources if DWR elects to do so, before January 1, 2035.

7) Authorizes the CPUC to order the procurement of resources with specific attributes by electrical corporations, ESPs, and CCAs as a result of the IRP process and requires the CPUC to enforce any resource procurement requirements on a nondiscriminatory basis. Provides that enforcement may include the assessment of penalties for noncompliance.

8) Requires the CPUC to annually submit a report to the Governor and Legislature on the types, amounts, and costs to ratepayers of diverse clean energy resources procured by DWR.

9) Requires the CPUC, if the CPUC requests the DWR to procure diverse clean energy resources and the DWR elects to conduct competitive solicitations or enter into contracts for diverse clean energy resources, to develop and adopt procedures and requirements that govern competitive procurement by, obligations on, and recovery of costs incurred by the DWR.

10) Requires the DWR, in evaluating bids received through a solicitation to consider the project's viability, ability to meet in-service dates, and the useful life, among other factors. Requires bids for the development of a diverse clean energy resource project to include the bidder's certification that certain labor requirements are met and that a skilled and trained workforce will be used to perform all construction work on the diverse clean energy resource project, as provided.

11) Authorizes the CPUC, at the request of the DWR, to require an electric IOU to act as the agent for the DWR or to assist the DWR in conducting the

solicitation, bid evaluation, or contract negotiation for new diverse clean energy resource procurement.

12) Authorizes the DWR to establish a schedule and mechanism for an electric POU to voluntarily obtain from the DWR diverse clean energy resources to be acquired by the DWR through its central procurement function on a contract-by-contract basis. Provides electric IOUs, ESPs, and CCAs with a voluntary option to obtain incremental diverse clean energy resources from the DWR, as provided.

13) Authorizes the CPUC, at the request of DWR, to order an electric IOU to transmit or provide for the transmission of, and distribute all electricity made available by the DWR, and, as an agent of the DWR, to provide billing, collection, and other related services on terms and conditions that reasonably compensate the electrical corporation for its services and adequately secure payment to the DWR.

14) Establishes the Diverse Clean Energy Central Procurement Fund and continuously appropriates moneys in the fund to the DWR for procurement by DWR as the central procurement entity. Makes an appropriation by establishing a continuously appropriated fund. Requires that all moneys collected by electric IOUs, ESPs, CCAs, and electric POUs and remitted to the DWR for diverse clean energy resources, and all moneys paid directly or indirectly to or for the account of the DWR for any sale, exchange, transfer, or disposition of those resources, be deposited into the fund.

15) Authorizes the DWR, upon determining that it is necessary or desirable to issue bonds to support activities for the procurement of diverse clean energy resources, to issue bonds for purposes of financing the procurement of those resources supporting the fund and other related expenses incurred by the DWR. Authorizes the DWR to adopt regulations for purposes of administering these provisions.

16) Exempts DWR contracts for energy resources used as the central procurement entity from review and approval required by the Department of General Services.

17) Establishes a sunset of January 1, 2035 by when DWR's authority to contract for electrical power ceases.

18) Requires the CPUC, on and before June 30, 2027, if the DWR determines that resources have been procured through the ESSRRP and that those resources

were used in a given month to meet a LSE's identified reliability need, to annually assess a capacity payment on each LSE that during that same month fails to meet its system RA requirements.

19) Requires the CEC, on or before January 31, 2024, in consultation with the CPUC, to submit a report to the appropriate policy and budget committees of the Legislature that includes an assessment of whether each electric POU exceeded, met, or failed to meet its minimum planning reserve margin and specified system RA requirements. Requires the executive director of the CEC, upon the submission of that report, on and before June 30, 2027, if the DWR determines that resources have been procured through the ESSRRP and that those resources were used in a given month to meet an identified reliability need, to annually assess a capacity payment on each electric POU in the CAISO balancing area that during that same month fails to meet its minimum planning reserve margin.

20) Establishes the Load-Serving Entity Capacity Payment Account and the Local Publicly Owned Electric Utility Capacity Payment Account in the DWR Electricity Supply Strategic Reliability Reserve Fund (ESSRRF), and specifies that moneys in those accounts would, upon appropriation by the Legislature, be used for contracts related to the ESSRRP. Requires capacity payments collected by the DWR from LSEs and electric POUs to be deposited in those two accounts.

21) Requires the CPUC in proceedings evaluating the issuance of certificates of public convenience and necessity for transmission projects, to establish a rebuttable presumption with regard to need for the project in favor of a CAISO governing board-approved need evaluation if certain requirements are satisfied.

22) Authorizes an electric POU to meet its minimum planning reserve margin through individual contractual procurement or through an aggregated or pooled portfolio of resources.

23) Clarifies and makes explicit CPUC enforcement over all LSEs, once it has authorized additional direct transactions, to include IRP process specified in Sections 454.52 to 454.54 of the Public Utilities Code. Includes additional clean-up of the Section 365.1 of the Public Utilities Code, including deletion of language referencing an already produced report required in SB 237 (Hertzberg, Chapter 600, Statutes of 2018).

24) Makes explicit that RA program shall facilitate development of generating capacity that is needed to achieve the state's SB 100 policy to achieve 100

percent zero-carbon and renewable energy by 2045. Requires each LSE to be subject to the same requirements for the IRP process, in addition to RA and RPS, that is applicable to electric IOUs.

25) Requires, as part of the 2025 edition of the Integrated Energy Resources Policy report, the CEC, in consultation with the CPUC, to assess barriers to electricity interconnection and energization and provide recommendations on how to accelerate those processes.

26) Authorizes the CEC to allocate moneys under the program Voluntary Offshore Wind and Coastal Resources Protection Program for workforce development grants in consultation with the California Workforce Development Board, consistent with "high road jobs" definitions in statute.

27) Requires, upon appropriation by the Legislature, that no less than $6 million from the General Fund is available for the 2024-25 fiscal year to support comprehensive, regional baseline environmental monitoring and research into the impacts of prospective offshore wind energy development where offshore wind has been leased by the Bureau of Ocean Energy Management of the U.S. Department of the Interior.

28) States the intent of the Legislature to appropriate additional resources for environmental permitting and related needs across applicable state entities upon the submission and review of the assessment required in budget bill, SB 122 (2023), for offshore wind permitting.

29) Makes changes to a required report regarding the use of funds from the ESSRRP, clarifies the report is from the CEC, not DWR, but consistent with a required report from DWR.

Background

Resource adequacy (RA). Following the California energy crisis of 2000-01, the California Legislature enacted legislation to prevent future incidents of widespread blackouts and rolling brownouts due to lack of electric generating capacity. Among the reforms adopted in response to the crisis was the adoption of Public Utilities Code §380 as an effort to better ensure reliability of electric supply. The statute directs the CPUC, in consultation with the CAISO, to establish RA requirements for all LSEs, including electric IOUs, ESPs, and now includes CCAs, which did not exist at the time of the crisis. The current RA program consists of system, local, and flexible requirements for each month of a compliance year. In October of each year, LSEs must demonstrate that they have procured 90 percent of their

system RA obligations for the five summer months (May-September) of the following year, as well as 100 percent of their local requirements, and 90 percent of their flexible requirements for each month of the coming compliance year. The CPUC has recently adopted changes to RA program, including increasing the planning reserve margin from 15 percent to 17 percent by 2024 for all LSEs and in the case of electric IOUs upwards of 20-22 percent effective planning reserve margin.

Cost Allocation Mechanism. Current law ensures the costs associated with the RA program are recovered on a nonbypassable basis, a process called the Cost Allocation Mechanism (CAM). The CAM is a regulatory process for allocating capacity costs of utility procurement across all benefitting customers. The CAM was conceived in a 2004 CPUC decision, adopted in a 2006 CPUC decision (D.06-07-029), affected by changes in law (SB 695, Kehoe, Chapter 337, Statutes of 2009), and continues to be adapted to new issues and circumstances. The CAM is a fixture of the CPUC's Long Term Procurement policy and is based on the principle that costs and benefits of new generation should be shared by all benefitting customers within an electric IOU's service territory. The mechanism for CAM is a one-way tool; it exists for the IOUs to purchase resources on behalf of all who rely on the electric grid, including customers of ESPs and CCAs. CAM allows the electric IOUs to spread costs of generation resources to the other LSEs.

CAISO backstop procurement. If California RA rules fail to provide sufficient resources, the CAISO is compelled to utilize centralized backstop procurement mechanisms in order to maintain electric system reliability. Centralized backstop procurement is whereby the CAISO contracts with a generator to address the shortfall. Under Federal Energy Regulatory Commission (FERC) rules, the CAISO, like all other balancing authorities, must ensure system reliability or face penalties by FERC. The CAISO has two mechanisms for centralized backstop procurement: Reliability Must Run (RMR) and Capacity Procurement Mechanism (CPM). A resource receiving RMR designation must continue to operate and is compensated by a rate set by the CAISO, per FERC approved tariffs. RMR contracts can be expensive relative to procurement through the CPUC process, especially considering their limited operating parameters. CPM can be used for resources that may be needed in the following year and where the resource is at risk of retirement. Like RMR contracts, CPM contracts are also often at a higher price relative to generation procured through the CPUC process. These costs are generally shouldered by ratepayers in the insufficient Local Capacity Area or by all ratepayers of the LSE(s) lacking the adequate RA.

SB 100 (De León, 2018). SB 100 established the state's target to meet 100 percent of the state's electricity retail load with renewable and zero-carbon resources by

2045. SB 1020 (Laird, Chapter 361, Statutes of 2022) established interim goals to meeting the SB 100 target, specifically requiring 90 percent of retail sales by 2035, 95 percent by 2040 to be met with renewable and zero-carbon energy resources. SB 100 Joint Agency Report evaluates the challenges and opportunities in implementing SB 100. It includes an initial assessment of the additional energy resources and the resource building rates needed to achieve 100 percent clean electricity, along with the associated costs. It uses a computer model to analyze these factors under various conditions and technologies. The report is scheduled to be updated every four years. The first report issued on March 2021 identified preliminarily that on average the state may need six gigawatts of new renewable and energy storage annually to meet the SB 100 goals.

IRP process. SB 350 (De León, Chapter 547, Statutes of 2015) required each LSE to file a biennial IRP for approval or certification by the CPUC. The CPUC combines all LSEs' IRPs to ensure the state is on its path to meet its clean energy procurement goals. POUs are required to file their own IRPs with the CEC. The goal of the IRP is a two-year planning process to ensure that LSEs are meeting targets that allow the electricity sector to contribute to California's economy-wide GHG emissions reductions goals and that helps to reduce overall costs. The effort is intended to forecast needs on a 10-year horizon. In this regard, the IRP is a forward-looking activity. Whereas the requirements to meet renewable energy standards is a compliance activity to review whether LSEs and POUs have satisfied their three-year compliance obligation under the Renewable Portfolio Standard (RPS) requirements to meet an increasing share of its retail load with eligible renewable energy resources, until achieving 60 percent by 2035. As part of the IRP process, the CPUC has issued several procurement orders on LSEs (summarized in the table below) to address near-term and mid-term procurement needs. Within the procurement orders, the CPUC has directed central procurement for local RA and mid-term reliability by electric IOUs for customers, including those of other LSEs.

CPUC IRP Procurement Order	**Total MW**	**Time Horizon (Calendar Years)**
D. 19-11-016	3,300 MW	2021-2023
D. 21-06-035 Mid-Term Reliability (MTR)	11,500 MW	2023-2028
D. 23-02-040 Supplemental	4,000 MW	2026-2027
Cumulative Procurement	**18,800 MW**	**2021-2028**

Recent budget and other energy "insurance" actions. In response to energy capacity challenges during extreme heat events, including the rotating outages in

August 2020, the Legislature, in collaboration with the Newsom Administration, adopted several measures throughout 2022, in addition to previously adopted measures, to continue to help shore-up California's electricity supply against the impacts from extreme events. These measures are noted in the table with additional details provided below. (Important note: Not included is other state budget funding to support development of new energy resources, such as long-duration storage, offshore wind, geothermal, and hydrogen. Also not detailed are the plethora of transmission-related efforts to streamline and expedite transmission and interconnection build-outs and approvals to support achieving the state's clean energy targets and reliability needs.)

Program	**Agency**	**State Budget/Ratepayer Funding**	**Status**
Electricity Supply Strategic Reliability Reserve Program	DWR	$2.37 billion State Budget	Contracts underway
Demand Side Grid Support Program	CEC	$295 million State Budget	Launched August 2022
Distributed Electric Backup Assets Program	CEC	$700 million State Budget	In Development
Diablo Canyon Nuclear PowerPlant	CPUC and Various	Ratepayer and $1.4 billion State Budget	Licensing is being pursued; initial federal funding approved, active CPUC proceeding
Clean Energy Reliability Investment Plan	CEC	~$1 billion State Budget	Plan developed and adopted. $100 million budgeted (including $32 million for DWR central procurement mechanism).
Emergency Load Reduction Program	CPUC	~$186 million in 2022 and 2023 (intended as five year program) Ratepayer	Launched in 2021.
Smart Thermostat Incentive Program	CPUC	$22.5 million Ratepayer	Launched in 2022

ESSRRP at the DWR (funded at $2.3 billion). In June 2022, Budget Trailer Bills, AB 205 (Committee on Budget, Chapter 61, Statutes of 2022), AB 178 (Ting, Chapter 45, Statutes of 2022), and AB 180 (Ting, Chapter 44, Statutes of 2022), were signed into law. These three pieces of legislation collectively established the ESSRRP and set forth new responsibilities and activities by DWR, funded by the newly established ESSRRF, and separate from the State Water Project. DWR

established temporary energy resources and created a new deputy director-level division with 25 staff – the Division of Statewide Water and Energy – which oversees the ESSRRP along with the State Power Augmentation Program which was developed in July 2021 in response to executive order direction to quickly deploy 120 MW of new generation. Under the ESSRRP, DWR acts as contingency insurance to help maintain electricity reliability. As part of the program, DWR contracts directly with power facilities and also enters into agreements with the state's large electric IOUs to reimburse for the value of imported firm energy resources to support summer reliability.

Comments

Is a new central procurement mechanism needed? The CPUC has existing authority to direct procurement of energy resources as demonstrated by the procurement orders it has issued via the IRP process to direct LSEs to procure energy resources that are needed to meet near- and mid-term reliability. Additionally, the CPUC has utilized longstanding authority to direct electric IOUs to procure energy resources for bundled customers, as well as, customers of other LSEs with the costs collected from all customers served (for example local and system RA). Proponents of this proposal, including Governor Newsom's Administration, who proposed related budget trailer bill language, contend that additional authority is needed so that energy resources will be procured to meet the state's clean energy and reliability goals. The proponents argue that electric IOUs may not have the financial ability to finance these larger and long lead-time energy resources, such as offshore wind, geothermal, and pumped storage projects. They view the authority granted to DWR in this proposal as an additional tool to help ensure we meet our clean energy and reliability goals, especially given the anticipated aggressive procurement that may be needed to achieve the state's goals.

Why DWR? DWR's primary purpose and mission is to manage the state's water supply. DWR procures energy resources to operate the state water project (perhaps the state's largest single source of energy demand). During the 2000-01 energy crisis, DWR was directed to procure resources to help the state address the shortfalls affecting the electrical grid, particularly as the state's large electric IOUs were in precarious financial situations (including one filing for bankruptcy and another on the verge of filing). However, DWR's performance in procuring resources at the time has been criticized by some suggesting DWR overpaid for resources, resulting in electric ratepayers having to shoulder the costs for the purchased energy for over two decades on their electric utility bills. Notably, DWR's procurement during the emergency conditions of the energy crisis may not be a fair comparison as to the procurement envisioned by this proposal, given this

proposal envisions this authority as a backstop mechanism that the CPUC can request as part of the IRP process – a forward-looking planning effort.

More recently, DWR has been tasked to administer the ESSRRP and Fund as an "insurance" of sorts for the electric grid during extreme events. DWR has entered into contracts to fulfill these responsibilities, including securing energy capacity from natural gas power plants subject to the State Water Resources Control Board's once-through-cooling regulations. This procurement has been met with some criticism about whether the state is advancing towards its clean energy goals or continuing to procure fossil-based resources. While DWR may not be an ideal entity to serve the central procurement role, it may be the best available option among the existing agencies and entities. Though some advocates have raised questions as to whether other entities should be considered, including establishing a new entity or re-establishing a now-defunct state financing authority. A previous bill, AB 56 (E. Garcia, 2019) sought to task California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) within the Treasurer's Office as a central procurement entity. That bill died in this committee and the Treasurer's Office raised serious concerns with expanding CAEATFA's role as into the energy procurement market. Given the timing of when the central procurement mechanism may be utilized, it's possible those alternatives may take too long to get established, as compared to tasking DWR.

Diverse clean energy resource mix? Currently, the language would authorize DWR to procure "diverse clean energy resources" defined as limited to resources meeting specified criteria. Namely, the language prohibits resources that are derived from fossil fuels, or would increase dependence on fossil-fueled resources, or pumped storage hydroelectricity that are over 500 MW and have never received state funding, and prohibit any resource that uses combustion (except if it is ancillary to the production of geothermal energy). In the case of pumped storage hydroelectricity, the intent is to only capture San Vicente Reservoir project which received funding in the 2021 State Budget. Additionally, the CPUC must determine that the resource is not under contract at sufficient levels to meet the state's clean energy goals and has a construction and development lead time of at least five years. As such, this proposal does not explicitly call out every eligible resource, but attempts to prohibit and require particular attributes. At a minimum, it is likely offshore wind, geothermal energy resources, and pumped hydroelectricity energy storage under 500 MW would be among the eligible resources DWR could procure. In this regard, the language attempts to narrow DWR's authority to procure only a subset of potential resources currently available. However, there may be additional eligible resources that meet the proposal's criteria prior to the sunset in 2035. Some stakeholders oppose the bill's proposal to add new terminology in the statute, namely "diverse clean energy

resources." They are not opposed to limiting the eligible generation resources for central procurement, but oppose including a new term that could be applied to procurement outside DWR's central procurement authority or future policy proposals. Additional stakeholders have concerns about not including certain resources, including hydrogen and biomass energy.

Backstop or more than backstop procurement? The proposal would require the CPUC to identify procurement needs through the existing IRP process and authorize the CPUC to request DWR procure needed resources after six months of identifying the need. The intent for the six month window is to allow other LSEs the opportunity to procure their share of their load if they elect to do so. This approach is a long-held principle of CCAs whose primary (if not exclusive) mission is to procure energy on behalf of their load. Such an approach seems appropriate to ensure LSEs exercise their responsibility to procure resources for their load, prior to a state agency stepping in. In this regard, it's possible the DWR procurement may not ever be used, or perhaps only used when truly necessary because the resource was too difficult for any individual LSE, or a few LSEs, to procure. However, other components of the proposal authorize LSEs and electric POUs to request DWR procure additional incremental procurement on behalf of their load. This option may allow LSEs and POUs to advance towards the state's clean energy and reliability goals. However, such an approach can also muddle whether procurement by DWR is intended as a backstop tool within the IRP or would enable LSEs and POUs from over-reliance on a state agency to procure resources on their behalf. Importantly, the proposal includes some safeguards to limit this election by LSEs, by requiring the CPUC make determinations as to its necessity and ensuring cost-recovery for these procurements.

Costs. Authorizing DWR to procure energy can have the unintended effect of reducing supply in the energy market and increasing prices overall (particularly in the currently constrained energy market). These costs come home to roost on electric utility customer bills. Additionally, market participants, including LSEs, electric POUs, and generators, may elect to delay procurement transactions so as to position themselves for procurement by DWR. In this regard, the state should tread carefully. This proposal attempts to address these challenges by limiting resources to those noted above, including those with at least a five year construction and development horizon – therefore a resource that is less likely to be procured in the current market. The proposal also provides an added safeguard that requires the CPUC to determine the procurement by DWR (including any bonds) is just and reasonable prior to the procurement, and if so, recoverable by a nonbypassable charge on customer's electric utility bills. DWR procurement would be additional costs on customers' current electric utility bills, though it's unclear to

what extent these would be less than or more than what would otherwise be procured to meet the state's clean energy and reliability goals.

Sunset date. The proposal would authorize the use of DWR as central procurement entity until January 1, 2035, at which point the central procurement mechanism would cease (while authorizing the continued life of any contracts entered into prior to the sunset). The imposition of the sunset provides the Legislature the ability to ensure the mechanism is appropriately working should it be re-authorized and to be terminated should it no longer be needed or not be effective.

Capacity payments for use of ESSRRP. As currently proposed, any near-term LSE's or POU's energy resource shortfall that is covered by capacity from the existing ESSRRP (funded in last year's budget $2.37 billion) requires the LSE or POU to make capacity payments into a new fund, with a sunset date of 2027. The proposal would apply any amounts from RA penalties up until the amount of the capacity payment for the month that the LSE or POU had the shortfall. For any RA penalty above the capacity payment, the delta would be deposited pursuant to the customary approach to penalties. For moneys deposited into the Capacity Payment Account, those funds would require future legislative appropriation, thereby limiting the life of the ESSRRF to the existing funding, unless the Legislature appropriates additional funding.

Need for technical and clarifying amendments. The author and committee may wish to amend the bill with additional amendments as follows:

1) Technical clarifying amendment to add the words "and diverse" to Public Utilities Code Section 454.51 (d) which was inadvertently left out: "…their portion of the renewable integration and diverse resources…"

2) Add (b) to Section 16 of the bill, and replace the existing (b) with (c) in order to clarify intent language regarding future funding for the Coastal Commission related to permitting and review of offshore wind energy projects:

   (b) Upon appropriation of the Legislature, additional resources from the General Fund shall be available for the 2024–25 fiscal year and ongoing to support the coastal development permitting at the California Coastal Commission of prospective offshore wind energy development in and around regions in which offshore wind energy areas have been leased by the Bureau of Ocean Energy Management of the United States Department of the Interior, pending future legislation.

3) Technical amendments to Section 8 of the bill, Public Utilities Code Section 454.52 (h)(1)(A) replace "diverse clean energy resources" with "eligible energy resources" and update all related references throughout the bill.

4) Add (e) (1) to Section 80820 of the Water Code to clarify the meaning of "construction" for purposes of the energy resource projects:

   (e) For purposes of this section, the following definitions apply:

   (1) "Construction" means any new construction work and subsequent construction and construction maintenance work following initial completion that is contracted out to a contractor in the construction industry, including the construction work on a barge, construction staging area, or construction area when being used as a construction work platform and the rigging and hoisting of construction materials directly from a barge, construction staging area, or construction area into the construction process for a construction project. "Construction" does not include loading and unloading of cargo to and from vessels and the movement of cargo to and from vessels at any port facility to the cargo's point of rest.

Prior/Related Legislation

AB 205 (Committee on Budget, Chapter 61, Statutes of 2022) among its many provisions, establishes the ESSRRP.

AB 209 (Committee on Budget, Chapter 251, Statutes of 2022) among its many energy-related provisions, makes additional changes to the ESSRRP, established the Voluntary Offshore Wind and Coastal Resources Protection Program.

SB 123 (Committee on Budget, Chapter 52, Statutes of 2023), among its many provisions, extended the date, from September 2022 to October 2023, by when electric IOUs may be reimbursed for above-market costs for imported energy and capacity products delivered or capable of being delivered to the state within the ESSRRP.

SB 124 (Committee on Budget, Chapter 53, Statutes of 2023), among its many provisions, extended the date, from September 2022 to October 2023, by when electric IOUs may be reimbursed for above-market costs for imported energy and capacity products delivered or capable of being delivered to the state, clarified that DWR must present an investment plan to the CEC, rather than the contracts, and makes additional clarifying changes of the ESSRRP.

AB 56 (E. Garcia, 2019) would have required the CPUC to empower the CAEATFA to undertake backstop procurement of electricity that would otherwise be performed by an electric IOU to meet state RA, IRP, and RPS goals not satisfied by retail sellers or LSEs. The bill failed passage in this committee.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: Yes

SUPPORT:

Supervisor Dawn Ortiz-Legg, San Luis Obispo County-District 3
350 Humboldt: Grass Roots Climate Action
American Bird Conservancy
American Clean Power Association
BlueGreen Alliance
Business Network for Offshore Wind
California Association of Port Authorities
California Chamber of Commerce
California Coastal Protection Network
California State Association of Electric Workers
California State Council of Laborers
California State Pipe Trades Council
California Wind Energy Association
City of Santa Rosa
Clean Air Task Force
Clean Power Campaign
Coalition of California Utility Employees
Elected Officials Protecting America
Environment California
Environmental Defense Fund
Equinor US
Fervo Energy
Golden State Wind
Humboldt Baykeeper
IBEW, Local Union 639
Invenergy
Monterey Bay Aquarium
National Wildlife Federation
Natural Resources Defense Council
Ocean Conservation Research
Offshore Wind California
RWE

San Diego County Water Authority
Santa Cruz Climate Action Network
Southern California Edison
The National Hydropower Association
Union of Concerned Scientists
Vineyard Offshore
Western State council of Sheet Metal Workers

OPPOSITION, unless amended:

California Municipal Utilities Association
City and County of San Francisco
County of San Diego
Humboldt County Workforce Development Board
Independent Energy Producers
San Diego Community Power
San Francisco Public Utilities Commission
San Jose Clean Energy

ARGUMENTS IN SUPPORT: According to the author:

> California is on the precipice of a clean energy transition that is poised to bring vast new clean energy projects, jobs, and economic development to the state. While the last decades of California's renewable development has favored intermittent renewables, policymakers are overdue in planning for and valuing other renewable development that can better match intermittent resources' profiles. These resources, which include geothermal, large-scale storage, and offshore wind projects, are either just getting started and carry development risks and higher costs, or have historically cost more to operate and maintain. AB 1373 provides a tool – DWR procurement authority – for the CPUC to be able to exercise when planning efforts show these diverse clean energy resources are needed, but the state utilities are unable to procure them. Using the DWR authority is likely to lead to lower costs to ratepayers for these higher-value resources than the utilities could achieve on their own, due to state bonding authority, state tax breaks, and minimizing project development risk by having a state entity negotiating contracts. Such ratepayer reductions should be encouraged during a time of increased electric and gas unaffordability. AB 1373 provides the path to establish this DWR procurement option to the benefit of California's ratepayers and workforce, and to reliably meet our clean energy goals.

ARGUMENTS IN OPPOSITION: In opposition to this bill, the CCAs and SFPUC contend this bill would expand CPUC authority over CCAs, allow electric IOU procurement for other LSE customers, and increase costs for customers by applying capacity payments. Humboldt County Workforce Development Board opposes the language in this bill related to workforce development funding without input or a clear role for existing state, regional, and local workforce development boards. These letters in opposition to this bill were received prior to the most recent amendment. As a result, it is not clear whether the entities opposed still remain opposed.

California Municipal Utilities Association writes in opposition to the most recent version of this bill (8/31/2023) expressing concerns about the structure of the capacity payments for electric POUs, opposing the exclusion of hydrogen energy from the eligible energy resources for the DWR central procurement, and concerns about the requirement to adopt a nonbypassable charge as the cost recovery mechanism for DWR central procurement when POUs exercise this option.

The Independent Energy Producers (IEP) oppose the addition of new terminology as proposed to be added to the code by the bill, namely "diverse clean energy resources." IEP suggests the new terminology is not needed and may impact other clean energy policies concerning the procurement of eligible renewable energy resources, such as biomass and biomethane, or resources that are under development, such as hydrogen. IEP also raises concerns that the central procurement entity could interfere with the competitive market and potentially "choke off procurement", such as impacting existing procurement for geothermal and pumped storage.

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