**SENATE COMMITTEE ON ENERGY, UTILITIES AND COMMUNICATIONS**
**Senator Steven Bradford, Chair**
**2023 - 2024 Regular**

| | | | |
|---|---|---|---|
| **Bill No:** | AB 1834 | **Hearing Date:** | 6/24/2024 |
| **Author:** | Garcia | | |
| **Version:** | 4/15/2024 Amended | | |
| **Urgency:** | No | **Fiscal:** | Yes |
| **Consultant:** | Nidia Bautista | | |

**SUBJECT:** Resource adequacy: Electricity Supply Strategic Reliability Reserve Program

**DIGEST:** This bill makes changes to AB 1373 (E. Garcia, Chapter 367, Statutes of 2023) including adjusting the requirements on local electric publicly owned utilities (POUs) and load-serving entities (LSEs) in meeting their capacity payments to the Electricity Supply Strategic Reliability Reserve Program (ESSRRP).

**ANALYSIS:**

Existing law:

1) Establishes the California Public Utilities Commission (CPUC) with jurisdiction over all public utilities, including electrical 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 Department of Water Resources (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 LSEs, including community choice aggregators (CCAs), electrical corporations, and electric service providers (ESPs). Requires each LSE to maintain physical generating capacity adequate to meet its load requirements, including peak demand and planning and operating reserves, deliverable to locations and at times as may be necessary to provide reliable electric service. Requires the CPUC to determine and authorize the most efficient and equitable means for LSEs to achieve specified purposes when meeting their RA requirements. Requires the CPUC, in consultation with the CAISO, to establish RA requirements for all LSEs. (Public Utilities Code §380)

6) Establishes the ESSRRP and Electricity Supply Reliability Reserve Fund (ESRRF) 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.*)

7) Requires the CPUC or the Executive Director of the CEC, to annually assess a capacity payment on each LSE or each electric POU, respectively, that during that same month failed to meet its system RA requirements if, on or before June 30, 2027, the DWR determines that resources procured through the program were used in a given month to meet a LSE's or a local electric POU's identified reliability need. Requires the CPUC or the CEC to determine a capacity payment unit cost in kilowatt per month for LSEs or electric POUs, respectively that is based on the monthly cost of the resources procured using the moneys from the program, as specified. (Water Code §§80713 and 80714)

8) Authorizes the DWR to establish a schedule and mechanism for an electric POU to voluntarily obtain from the DWR eligible energy resources to be acquired by the DWR through its central procurement function. Requires the electric POU, if it voluntarily participates, to commit to the imposition of a

nonbypassable charge on its ratepayers sufficient to fund its participation, as specified. (Water Code §80822)

9) Requires each electric 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. Requires the electric POU, upon request, to provide the CEC with any information the CEC determines necessary to evaluate the progress made by the electric POU in meeting that requirement. (Public Utilities Code §9620)

This bill:

1) Requires the CPUC and the CEC to consider mitigating factors in determining the capacity payment unit cost on LSEs and electric POUs for failing to meet their respective system RA requirements in a given month where resources from the ESSRRP were used. Provides that the mitigating factors include the extent of the scarcity-driven or otherwise above-market costs of those resources procured using moneys from the ESRRF.

2) Allows electric POUs to commit to an alternative mechanism, rather than a nonbypassable charge, to fund their voluntary participation for obtaining eligible energy resources via the DWR central procurement function.

3) Prohibits the DWR, if the electric POU commits to the imposition of a nonbypassable charge, from adding any cost in excess of the cost of participation.

4) Requires the CEC to coordinate its request with other entities seeking related information to reduce the overall response burden to the electric POUs.

**Background**

*AB 1373 (E. Garcia, Chapter 367, Statutes of 2023)*. AB 1373, originally introduced as a budget trailer proposal from the Newsom administration in early 2023, makes numerous changes to electricity policy, most notably, authorizing DWR to serve as  a central procurement entity to procure long lead time energy resources in order to help the state meet its renewable and zero-carbon energy goals. The bill also contains provisions allowing the CPUC and CEC to levy capacity payments on LSEs and electric POUs, respectively, when those utilities are deficient in their RA system requirements in the same month the ESSRRP is utilized.

*ESSRRP at the DWR (funded at $2.4 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 ESRRF, 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 megawatts (MW) of new generation.

*ESSRRP procurement.* Under the ESSRRP, DWR acts as contingency insurance to help maintain electricity reliability within the CAISO balancing authority area by procuring and providing incremental power during extreme events. As part of the program, DWR contracts directly with power facilities and also enters into agreements with the state's large electric investor-owned utilities (IOUs) to reimburse for the value of imported firm energy resources to support summer reliability. These resources are meant to operate "outside" of CAISO's market, meaning they do not regularly schedule into the market, and only operate during grid emergency events. Based on the May 2024 Electricity Supply Strategic Reliability Reserve Program Report, DWR has committed over $2.1 billion in emergency and temporary power generators, along with imported energy, various service contracts, and extended operations of retiring facilities, with total disbursed through February 2024 of over $615 million. DWR has procured approximately 3 gigawatts (GW) of capacity from 4 retiring facilities, nearly 4 GW of imported energy during 2023, and additional 143 MW from temporary and emergency generators. As noted above, the procurement of resources in the ESSRRP are paid by budget appropriation.

*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. In the case of electric POUs, they typically establish their own planning reserve margins to ensure they serve their customers' load. The CPUC also assesses penalties on the LSEs who fail to satisfy their RA obligations.

*Capacity payments*. Under AB 1373, the CPUC and CEC are authorized to collect capacity payments from LSEs and electric POUs who are deficient in their reliability procurement during the same month as the ESSRRP is utilized. Electric POUs are found deficient in their reliability procurement if they failed to meet the self-established minimum planning reserve margin. The capacity payments are intended to act as an incentive to LSEs and electric POUs to sustain their reliability procurement and also provide a financial injection to the ESSRRP to support its continued operation. The current state budget deficit makes it unlikely additional funding will be appropriated from the general fund to the ESSRRP.

*CEC tasked with reviewing electric POUs' planning reserve margins.* AB 209, a 2022 budget trailer bill, directed the CEC to make recommendations to electric POUs on the minimum planning reserve margin. The CEC has opened a rulemaking to establish regulations for assessing and collecting capacity payments for electric POUs in the CAISO balancing area that are deficient at the same time the ESSRRP is triggered for an identified reliability need. The CEC has noted that next steps include hosting a pre-rulemaking workshop, drafting a staff report to include proposed regulations, and seeking public feedback. Once those actions are complete, the CEC intends to initiate the formal rulemaking process and submit the proposed regulations for adoption at a Business Meeting.

In April, the CEC issued the *Staff Report Assessment of Publicly Owned Utilities' Resource Adequacy Assembly Bill 1373 Report*. The report provided helpful insight into the significance of the electric POU load within the CAISO balancing area, a snapshot of electric POUs' reliability, and other information. Specifically, the report notes that the electric POUs within the CAISO make up less than 10 percent of the total CAISO peak demand in September 2023. The remaining 90 percent consists of CPUC-jurisdictional Load Serving Entities. The analysis shows that in 2023, seven electric POUs were identified as resource deficient; in 2024, the number increased to nine. However, the report notes that some POUs projecting deficiencies may have contracted additional resources, imports, or spot market purchases after submittal of the supply forms used for the analysis and which may not be reflected in the report's analysis. The aggregated RA showings data from

July to September 2023 indicate that at least 14 POUs were resource deficient, while 12 reported sufficient RA resources. POUs with deficiencies had peak demands less than 100 MW, with the majority under 30 MW. As such, the deficiencies totaled 0.64 percent, 0.66 percent and 0.75 percent of total CAISO need for July, August and September, respectively.

**Comments**

*Need for this bill.* The sponsors of this bill contend that additional modest flexibility is warranted in the requirements to impose capacity payments established by AB 1373 (2023). The electric POUs and LSEs have repeatedly expressed concerns about the constrained RA market which is experiencing limited supply and increased costs. They note the challenges of contracting for resources within the constrained market, even as they may make several good faith attempts to contract for resources. In this regard, they seek changes to the language adopted in AB 1373 to provide the CEC and CPUC authority to consider mitigating factors, including scarcity and above-market prices, when imposing capacity payments on electric POUs and LSEs.

*A balancing act*. This bill's proponents' concerns about a constrained RA market seem valid, as we've heard from many of the LSEs and electric POUs about the increased costs of resources and the challenges with securing resources, including those that were on the cusp of being contracted by an LSE or electric POU only to be outbid by a competing buyer. In this regard, the ability for the CPUC and CEC to consider mitigating factors seems reasonable. However, the need to ensure reliability for the electric system as a whole continues to be paramount concern. This bill requires the agencies to consider mitigating factors, but appropriately does not prescribe to what extent these factors should impact the amount of the capacity payments assessed, and instead defers to the discretion of the agency. In this regard, the LSEs and electric POUs should continue to make good faith efforts towards securing their respective resource adequacy obligations.

Additional, proposed changes in this bill seems reasonable, including those providing electric POUs some flexibility in the mechanisms for paying their share of any voluntary procurement of resources contracted by DWR via the central procurement authority.

**Prior/Related Legislation**

AB 1373 (E. Garcia, Chapter Statutes of 2023) made numerous changes to electricity policy, most notably, authorized the 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. The bill also includes numerous related and additional provisions.

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

AB 209 (Committee on Budget, Chapter 251, Statutes of 2022) among its many energy-related provisions, makes additional changes to the ESSRRP.

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.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

**SUPPORT:**

Northern California Power Agency, Co-sponsor
Southern California Public Power Authority, Co-sponsor
Anaheim Public Utilities
California Community Choice Association
California Municipal Utilities Association
City of Corona
City of Glendale Water & Power
City of Lompoc
City of Palo Alto Utilities Department
Imperial Irrigation District
Pasadena Water and Power Department
San Diego Community Power

**OPPOSITION:**

None received

**ARGUMENTS IN SUPPORT:** According to the Southern California Public Power Association and the California Municipal Utility Association:

> The bill clarifies that a local publicly owned electric utility (POU) will not be assessed a capacity payment for the reliability needs of others and provides the state agencies with tools to account for mitigating factors when calculating a utility's fair share of reliability costs. These provisions provide certainty that capacity payments will be enforced only when needed and in an equitable manner that accurately reflects the status of the energy market. The bill also seeks to reduce administrative burden for POU staff which will help public agencies optimize deployment of resources. Additionally, we are strongly supportive of AB 1834's inclusion of POU financing mechanisms when paying for voluntary participation in central procurements. This provision creates flexibility that allows a POU to utilize the financing mechanisms that best serve its customers in a manner that also ensures that the Department of Water Resources is compensated for a POU's share of a procurement.

**-- END --**