

State of California

Memorandum



ate: January 6, 2025
To: Delphine Hou, Deputy Director, Statewide Energy, DWR
From: Leuwam Tesfai, Deputy Executive Director for Energy and Climate Policy Energy, CPUC
Subject: Memorandum: Establishing Interagency Protocols Regarding Water Code Section 80713, as established by Assembly Bill (AB) 1373 (Garcia, 2023) Regarding Capacity Payments for Strategic Reliability Reserve Resources

This memorandum establishes and memorializes protocols for the California Public Utilities Commission's (CPUC) and the California Department of Water Resource's (DWR) implementation of Water Code Section 80713. Section 12 of AB 1373 sets forth the requirement that, under certain circumstances, load-serving entities (LSEs) pay strategic reserve capacity payments to DWR to cover costs for the Electricity Supply Strategic Reliability Reserve Program (ESSRRP) resources referred to at the CPUC as the "Strategic Reserve Capacity Payment" or "LSE Capacity Payment."

The Implementation Protocols contained in this memorandum describe how the CPUC will coordinate with DWR and obtain key inputs from DWR to effectuate Water Code Section 80713. It also provides transparency for how the CPUC will implement the new legal requirements related to Strategic Reserve Capacity Payments.

As provided by Water Code Section 80713, subdivision (a), the Strategic Reserve Capacity Payment assessment is related to, but distinct from, the CPUC's Resource Adequacy (RA) citation program penalty. Citations are a CPUC enforcement tool to levy penalties for rule violations. The RA citation program provides the CPUC's Consumer Protection Enforcement Division (CPED) the authority to cite and fine CPUC-jurisdictional load-serving entities (LSEs) for failure to comply with the RA program. Fines collected from the RA citation program will be deposited into the DWR

Load-Serving Entity Capacity Payment Account (DWR LSE Capacity Payment Account) in the event that an LSE receives an RA system citation for violations through June 30, 2027 and the DWR ESSRRP resources are triggered in the same calendar month as the citation violation. (See Water Code 80713, subd. (3).)

Background

In 2023, the State of California passed Assembly Bill 1373 that added to Section 80713 to the Water Code. Section 80713 which establishes capacity payments that must be paid by load-serving entities that fail to meet their system Resource Adequacy requirements and use resources that DWR procured through the Electricity Supply Strategic Reliability Reserve Program.

Water Code Section 80713 reads as follows:

(a) (1) On and before June 30, 2027, if the Department of Water Resources determines that resources it procured through the Electricity Supply Strategic Reliability Reserve Program were used in a given month to meet a load-serving entity's identified reliability need, the Public Utilities Commission shall annually assess a capacity payment on each load-serving entity that during that same month fails to meet its system resource adequacy requirements pursuant to Section 380 of the Public Utilities Code. The capacity payment is not a penalty and does not prohibit the Public Utilities Commission from assessing a penalty on a load-serving entity for a failure to comply with any resource adequacy requirement.

(2) If a load-serving entity fails to comply with its system resource adequacy requirements pursuant to Section 380 in a month when resources procured by the Department of Water Resources through the Electricity Supply Strategic Reliability Reserve Program are used to meet the load-serving entity's identified reliability need and a penalty is assessed by the commission on the load-serving entity for that failure, then, on and before June 30, 2027, both of the following requirements shall apply:

(A) If the penalty is less than the capacity payment, the capacity payment shall be reduced by the amount of the penalty and the penalty shall be deposited into the Load-Serving Entity Capacity Payment Account.

(B) If the penalty is more than the capacity payment, then an amount of the penalty equal to the otherwise applicable capacity payment shall be deposited into the Load-Serving Entity Capacity Payment Account.

(3) The annual capacity payment shall be remitted to the Load-Serving Entity Capacity Payment Account by a load-serving entity that was assessed a capacity payment pursuant to paragraph (1) within 30 days of the commission notifying the load-serving entity.

(b) The Public Utilities Commission, in consultation with the commission [California Energy Commission], shall determine a capacity payment unit cost in kilowatt per month for load-serving entities that is based on the monthly cost of the resources procured using moneys from the Department of Water Resources Electricity Supply Reliability Reserve Fund, including the Load-Serving Entity Capacity Payment Account, with the total costs weighted two-thirds for June through September and one-third for the remaining eight months, and this unit cost shall be multiplied by the amount of kilowatts that the load-serving entity was deficient in its system resource adequacy requirements during the same month the Electricity Supply Strategic Reliability Reserve Program resources were used, based on the resource adequacy program rules, requirements, and resource counting conventions in place at the time of the deficiency, after crediting the deficient load-serving entity with its share of any reliability resources procured by other entities on its behalf. The Public Utilities Commission may make any further adjustments to the capacity values of any nonperforming resources included in a load-serving entity's portfolio when determining the amount of this deficiency. Any adjustments made by the Public Utilities Commission shall align with any adjustments made by the commission as authorized by subdivision (b) of Section 80714.

(c) This section shall become operative on January 31, 2024.

CPUC - DWR Implementation Protocols for Section 80713 as applied to CPUC Jurisdictional LSEs

I. CPUC-DWR Information Exchange

The CPUC and DWR will prepare for implementation of Strategic Reserve Capacity Payments by undertaking the following steps to establish information exchange between CPUC and DWR:

- a. DWR will provide the CPUC a list of generator units that comprise the ESSRRP, updating the CPUC in a timely manner for any unit changes between January 31, 2024 and June 30, 2027 (or later date if the program is subsequently extended).

- b. In January of each year, DWR will provide the CPUC annual actual cost information in accordance with Section IV of this memorandum. Annual will be defined as covering October 1st to September 30th, of the prior year. For example, in January 2026, annual actual costs will cover October 1, 2024 through September 30, 2025.
- c. The CPUC will use the updated notifications of annual actual cost information provided in (b) to establish the actual Strategic Reserve Capacity Payment costs for the October 1st through September 30th calendar year.
- d. Until June 30, 2027, DWR will provide the CPUC with a written notice for any month that the ESSRRP is Triggered, as defined in Section II(a)(ii). Running of resources for testing does not constitute a 'Trigger' under the program (refer to Section II for Trigger definition). Running resources at minimum operating level (Pmin) also does not constitute a 'Trigger' under the program. DWR will notify the CPUC approximately one month after the ESSRRP is triggered.

II. Strategic Reserve Capacity Payment Criteria

The CPUC will implement the following criteria in compliance with Section 80713(a) to determine the applicability of the Strategic Reserve Capacity Payment requirements to LSEs.

- a. CPUC Staff will calculate the Strategic Reserve Capacity Payment if all the following criteria are met:
 - i. DWR provides CPUC information that one or more units in the ESSRRP were used in a given month to meet a system reliability need.
 - ii. Resources under the ESSRRP shall be considered "Triggered" within a given month if any ESSRRP resource has operated above its Pmin during one of the following events to meet a system reliability need in the ISO Balancing Area for that month:
 - 1. EEA 1: an energy emergency alert that the ISO issues to indicate that the ISO real-time analysis shows all resources are in use or committed for use, and energy deficiencies are expected.
 - 2. EEA 2: an energy emergency alert issued by the ISO requesting emergency energy from all resources and indicating that it has activated emergency energy programs.
 - 3. EEA 3: Either

- Preparing for Rotating Power Outages: an energy emergency alert that the ISO issues to indicate that the ISO grid operator is unable to meet minimum reliability reserve requirements and has declared the initial step of an EEA 3, or
 - Ordering Rotating Power Outages: an energy emergency alert that the ISO grid operator has ordered utilities to begin rotating power outages to protect grid reliability. The final step of an EEA 3 is declared when electricity supply is not sufficient to meet demand and required reserves are unable to be maintained.
4. Any other operation of the ESSRRP resources for reasons not defined herein does not constitute a “Trigger”.
- iii. An LSE under CPUC jurisdiction and subject to Public Utilities Code 380 is found deficient in meeting its system RA requirements¹ for a specified number of megawatts (MWs) for a particular month.
 - iv. The LSE citation for a system RA deficiency was issued for the same month a unit from the ESSRRP was used.
 - v. CPED establishes via the CPUC’s RA Citation Enforcement Program, established by Resolution E-4195, *et al.*, that the LSE failed to meet the identified need. The RA citation program administered by the CPUC includes both year-ahead and month-ahead RA program citation enforcement authority and is enforced by CPED. An LSE must have a monthly RA deficiency of System RA assessed by CPED to be subject to the Strategic Reserve Capacity Payment process.
- b. If the criteria identified in Section II(a) above are met for any CPUC jurisdictional LSE, then CPUC Staff will identify the Strategic Reserve Capacity Payment for that LSE as follows:
 - i. CPUC Staff shall determine the system RA citation amount using the Commission-adopted RA citation deficiency.
 - ii. For any month of deficiency for which IOUs, at the direction of the CPUC, have procured Excess Resources (including RA and non-RA eligible resources) on behalf of all benefiting customers in their service territories, CPUC Staff shall identify the total amount of Excess Resources that were procured on behalf of, and paid for by, the LSE.

¹ Pursuant to Section 380 of Public Utility Code and related CPUC Decisions.

- iii. CPUC Staff will identify the pro-rata share of the Excess Resources that shall be applied to the LSE deficiency to provide for “*crediting the deficient load-serving entity with its share of any reliability resources procured by other entities on its behalf.*” The pro-rata share will be based on the individual LSE’s pro-rata share of monthly peak load for the given month. The pro-rata share may be confidential.
- iv. CPUC Staff will subtract the pro-rata share of Excess Resources from the LSE’s otherwise cited system RA deficiency amounts to determine any residual LSE deficiency amount.
- v. Any residual LSE deficiency amount is the deficiency amount that may be subject to the Strategic Reserve Capacity Payment.

III. Capacity Payment Amounts

The CPUC will calculate the Strategic Reserve Capacity Payment Amounts as directed by the statute based on information provided by DWR.

- a. CPUC staff will multiply the residual LSE deficiency amount above by the per month unit cost of the ESSRRP resources to determine the Strategic Reserve Capacity Payment Amount.
- b. CPUC staff will identify the monthly ESSRRP unit costs based on the specified statutory direction outlined in Water Code Section 80713 subdivision (b), namely:
 - i. Two-thirds weighting of the annual portfolio costs incurred from June through September;
 - ii. the remaining one-third of the annual portfolio costs from the remaining months.
- c. Table 1 below provides draft estimates of the annual Capacity Payments for illustrative purposes. The Table 1 estimates reflect annual ESSRRP costs under a “high-cost” scenario for the periods of October 1, 2024, through September 30, 2027. The high-cost scenario is conservative because it does not include offsetting revenues and assumes good unit performance during triggering events in summer. Sample portfolio costs and seasonal unit costs reflective of this weighting are shown in Table 1:

Table 1. Illustrative Example of DWR Draft Estimate of AB 1373 Electricity Supply Reliability Reserve Fund Costs – High-Cost Scenario (as of 11/2024)

10/01/2024-09/30/2025				10/01/2025-09/30/2026				10/01/2026-09/30/2027			
Capacity (MW)	Estimated Cost (\$)	Summer Rate (\$/kW-month)	Winter Rate (\$/kW-month)	Capacity (MW)	Estimated Cost (\$)	Summer Rate (\$/kW-month)	Winter Rate (\$/kW-month)	Capacity (MW)	Estimated Cost (\$)	Summer Rate (\$/kW-month)	Winter Rate (\$/kW-month)
3,029.8	\$383,875,000	\$21.1	\$5.3	3,029.8	\$347,875,000	\$19.1	\$4.8	885.3	\$115,625,000	\$21.8	\$5.4

- d. An LSE’s Strategic Reserve Capacity Payment for any month the ESSRRP is triggered will be determined by:
- i. The applicable seasonal capacity payment unit cost (depending on what month the deficiency was incurred); and
 - ii. The residual LSE RA deficiency amount above: i.e., the LSE’s monthly deficiency MW amount determined by the applicable RA citation minus Excess Resources credits.

Formula for Calculating Payment Based on RA Deficiency:

Strategic Reserve Capacity Payment (\$) = \$/kW-month applicable Seasonal Capacity Payment Unit Cost x monthly RA deficiency MWs x 1,000 kW/1 MW

- e. The final Strategic Reserve Capacity Payment to be remitted to DWR as follows:
- i. If the RA Program Citation Penalty (\$) is *less than or equal to* the LSE Strategic Reserve Capacity Payment (\$) determined using the calculation above, then:
 - 1. The full RA Program Citation Penalty will be remitted from a CPUC Special Deposit Fund (after the LSE has paid its Capacity Payment to the CPUC) to the LSE Strategic Reserve Capacity Payment Account by the CPUC’s Fiscal Office *and*
 - 2. The LSE shall remit any remaining difference between the RA Program Citation Penalty and the LSE Capacity Payment to the DWR LSE Strategic Reserve Capacity Payment Account, which

will require LSEs to adhere to DWR contracting and payment processes.

- ii. If the RA Program Citation Penalty is *greater than* the LSE Strategic Reserve Capacity Payment, the RA Program Citation Penalty will equal the LSE Capacity Payment. The respective LSE Strategic Reserve Capacity Payment will be remitted, after the LSE has paid its Capacity Payment to the CPUC, from a CPUC Special Deposit Fund to the DWR LSE Capacity Payment Account and the remaining difference between the RA Program Citation Penalty and the LSE Strategic Reserve Capacity Payment will be remitted to the General Fund by the CPUC's Fiscal Office.
- f. If the ESSRRP is determined to not be Triggered, then the CPUC's Fiscal Office will remit the RA Program Citation Penalties directly to the General Fund after the LSE has paid its RA Program Citation Penalty payment to the CPUC.

IV. Updated Information from DWR to CPUC

To fully implement the Strategic Reserve Capacity Payments section of the code, CPUC requests DWR provide updated information from DWR annually (using an October 1st through September 30th timeline).

- a. DWR will identify the actual total annual costs of the ESSRRP that should be used by CPUC and CEC in establishing and assessing a monthly LSE capacity payment.
- b. The total annual cost should reflect the actual contracted costs of the ESSRRP portfolio of resources, net of revenues, associated with both settlement data and the actual performance of these resources adjusted seasonally over the course of the annual period.
- c. Similar to Table 1, the CPUC will establish the revised payment schedule for the prior year and a forecast of future annual costs of the ESSRRP for the coming 12-month period, and post information on the CPUC's website for purposes of providing transparency of the expected costs if capacity payment criteria are met. The actual Strategic Reserve Capacity Payment amount will not be available until after the fact because DWR must provide both (1) actual annual costs and (2) a statement delineating whether and when the resources were Triggered.

V. CPUC Implementation Steps/Mechanics

The CPUC Staff will assess LSE Strategic Reserve Capacity Payments annually if Strategic Reserve Capacity Payment criteria (Section II) are met using the actual contract cost input provided by DWR and the monthly RA program deficiency amounts cited by CPED.

If CPUC Staff determines that an LSE should be assessed a Strategic Reserve Capacity Payment, the CPUC Staff will notify the deficient LSE via email from the Energy Division's (ED) Deputy Executive Director including the information on which staff based the determination (*i.e.*, information establishing how the criteria in Section II were satisfied). The communication will:

1. Provide the LSE with the final Strategic Reserve Capacity Payment amount.
2. Direct the LSE to remit the assessed Strategic Reserve Capacity Payment, within 30 calendar days from the date of receiving email notification from ED's Deputy Executive Director to the DWR LSE Capacity Payment Account, Fund 9343. Refer to section (III)(e)(i-ii) of this memo regarding the applicable LSE Strategic Reserve Capacity Payment amount calculation.

VI. Memo Implementation and Future Updates

CPUC Staff expects minor implementation details may emerge once this process is undertaken. The CPUC will attempt to provide an updated implementation memo if there are significant modifications to the process described herein.