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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Oversee the
Resource Adequacy Program, Consider
Program Refinements, and Establish Forward
Resource Adequacy Procurement Obligations.

R.19-11-009

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S
LATE-FILED TRACK 2 PROPOSAL**

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March 18, 2020

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R.19-11-009

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S
LATE-FILED TRACK 2 PROPOSAL**

Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure and the *Assigned Commissioner's Scoping Memo and Ruling*,¹ the California Community Choice Association ("CalCCA")² respectfully requests leave to late-file a proposal in Track 2 addressing waiver and penalty rules for the Commission's Resource Adequacy ("RA") program.

I. INTRODUCTION

Current conditions justify establishing a process to provide load-serving entities ("LSEs") waivers for system and flexible RA compliance obligations in a manner similar to the existing process for waivers of the local RA compliance obligation. System resources are becoming scarcer, as the Energy Division and the Commission have squarely observed. The scarcity is reflected in LSEs' 2019 compliance showings. Year ahead system RA deficiencies totaled 1,571 MW, with collective deficiencies of 159.15 MW and 847.02 MW for July and August,

¹ *Assigned Commissioner's Scoping Memo and Ruling*, Jan. 22, 2020 ("Scoping Memo") at 7; *see also infra* Section III.

² California Community Choice Association represents the interests of 19 community choice electricity providers in California: Apple Valley Choice Energy, CleanPowerSF, Clean Power Alliance, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Monterey Bay Community Power, Peninsula Clean Energy, Pioneer Community Energy, Pico Rivera Innovative Municipal Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Jacinto Power, San Jose Clean Energy, Silicon Valley Clean Energy, Solana Energy Alliance, Sonoma Clean Power, and Valley Clean Energy.

respectively, for CPUC-jurisdictional LSEs.³ Flexible RA deficiencies also surfaced for 2019, with a shortfall of 294.3 MW in the year ahead showing, with 114.1 MW remaining uncured for September.⁴

CalCCA acknowledges the critical need to secure new system RA resources, as evidenced by its support for an incremental system RA procurement requirement in R.16-02-007. Pending commencement of deliveries from the incremental resources, however, LSEs face acute tightening in the system and flexible RA market. Requiring LSEs to procure RA under these conditions without a waiver “relief valve” enables generators to exercise market power. In addition to enabling exercise of market power, system and flexible RA penalties that do not take into account an LSE’s commercially reasonable efforts to procure are simply unproductive. They do not change the behavior of LSEs already making good-faith efforts to comply, do not contribute to reliability needs, and only harm ratepayers. Customers of LSEs bound to procure resources at high prices will bear the consequences of the higher prices, penalties, or both. Additionally, penalties that do not take into account individual circumstances and are calculated using a formulaic approach, as is currently being done for system RA, lack due process and can be considered unconstitutionally excessive.

For these reasons, CalCCA proposes adoption of a waiver and penalty framework for system and flexible RA. The framework would require a demonstration by the LSE that it undertook commercially reasonable efforts to procure the necessary RA but was unable to do so due to (a) prices indicative of market power, (b) unreasonable terms offered by generators, or (c) a lack of offers to fulfill their need. While Energy Division Staff has expressed concern that a system RA waiver could disincentivize LSEs from bringing online new capacity that the

³ *Energy Division Revised State of the Resource Adequacy Market Report*, Table 18, at 34.

⁴ *Id.* at 35.

Commission has signaled is needed, CalCCA’s proposal addresses this concern by providing that a waiver need not be granted if there is insufficient capacity available in the system and the CPUC or CAISO had clearly signaled a potential shortfall three or more years prior. More detailed criteria are outlined in Section IV.

II. PROCEDURAL BACKGROUND

On October 30, 2019, CalCCA filed a Petition for Modification of Decision 19-06-026 (“Petition”) to establish a system and flexible RA waiver process in R.17-09-020. Specifically, CalCCA proposed that “the Commission grant Energy Division Staff the broad authority to grant waivers and to develop the criteria for such waivers, beginning with the 2020 compliance year.”⁵ CalCCA proposed specific modifications to existing rules, both to justify a system or flexible RA waiver and to moderate penalties.⁶ A number of parties filed responses to the Petition, attached to this Proposal, including Pacific Gas and Electric Company,⁷ the Independent Energy Producers Association,⁸ and the Public Advocates Office.⁹ More than four months later, the Commission has not responded to the Petition.

On November 13, 2019, the Commission issued the new RA rulemaking, R.19-11-009. The Scoping Memo for Track 2 of this rulemaking invited proposals addressing a range of issues, including “[c]hanges to the existing penalty structure and waiver process to address potential market power and other issues.”¹⁰ Parties filed a variety of proposals on February 21,

⁵ Appendix A, *California Community Choice Association Petition for Modification of Decision 19-06-026*, Oct. 30, 2019, at 9.

⁶ *Id.* at 9-10.

⁷ Appendix B, *Response of Pacific Gas and Electric Company (U 39 E) to California Community Choice Association Petition for Modification of Decision 19-06-026*, Nov. 12, 2019.

⁸ Appendix C, *Response of the Independent Energy Producers Association to California Community Choice Association’s Petition for Modification of Decision 19-06-026*, Nov. 12, 2019.

⁹ Appendix D, *Response of the Public Advocates Office to California Community Choice Association’s Petition for Modification of Decision 19-06-026*, Nov. 12, 2019.

¹⁰ *Assigned Commissioner’s Scoping Memo and Ruling*, Jan. 22, 2020, at 7.

2020, pursuant to the Scoping Memo, but CalCCA did not refile the proposal outlined in the Petition as a Track 2 proposal, presuming that the Commission would respond to the Petition consistent with its customary practices.

Energy Division Staff suggested to a CalCCA member at the March 5, 2019, Track 2 workshop that it would also be appropriate to file an official proposal in an open RA proceeding. CalCCA accordingly submits this Track 2 proposal to address a system and flexible RA waiver and penalty framework, seeking parties' comments in their March 23, 2020 comments or March 30, 2020 reply comments.¹¹

III. CONDITIONS WARRANT A SYSTEM RA WAIVER AND PENALTY MITIGATION FRAMEWORK

The Commission has long been clear that it will not foster conditions in the market in which LSEs must subject themselves to pay prices inflated by an exercise of market power. More than 15 years ago, the Commission declared: “we will not ‘pay any price’ or require utilities to sign contracts that meet these requirements at any cost.”¹² It noted a year later: “[w]e stand by our earlier commitment to ensure that LSEs are not placed in a position whereby they would have to pay any price to acquire the capacity needed for their RA obligations.”¹³ The Commission has also stated that LSEs should not be obligated to procure capacity that does not exist.¹⁴ The Commission continues to be concerned about market power exercise, framing as an issue in the Order Instituting Rulemaking “[m]arket power mitigation measures, including changes to the current penalty structure and waiver process for system, flexible and local RA.”

¹¹ See *Administrative Law Judge's Ruling Modifying Track 2 Schedule*, Feb. 28, 2020, at 3.

¹² D.04-10-035 at 15.

¹³ D.05-10-042 at 66.

¹⁴ D.06-06-064 at 21-22 and D.10-06-036 at 64.

Unfortunately, current market conditions are creating both an opportunity and incentive for sellers to exercise market power in the wholesale market. The Commission underscored these conditions in June 2019, offering its observations on system RA trends:

First, many market participants have informally observed a tightening of the bilateral market. In addition, according to Commission staff, there has been a decline in the robustness of competitive solicitations. Finally, a number of LSEs have not been able to comply with the system requirements for the 2019 resource adequacy compliance year.¹⁵

Indeed, in each month between July through September 2019, the Energy Division reported at least four LSEs being unable to meet their system RA requirements in their Year Ahead filings.¹⁶ By the Month Ahead filings, only one LSE in each month managed to make up its system RA deficiency.¹⁷ There are four possible explanations for why so many LSEs still had system RA deficiencies by the Month Ahead filing for this result: (1) they elected to do nothing; (2) they bid for system RA at a price below the penalty amount and were outbid; (3) the system RA offered was at a price above the penalty amount and they either chose not to buy or were outbid; or (4) there was no system RA offered for sale. As LSEs were not permitted to apply for system RA waiver requests and describe their procurement efforts, it is uncertain why they had system RA deficiencies. By the 2020 Year Ahead filings, fewer LSEs overall had system RA deficiencies, although five LSEs had deficiencies for the month of September.¹⁸ In addition, the

¹⁵ *Assigned Commissioner and Administrative Law Judge's Ruling Initiating Procurement Track and Seeking Comment on Potential Reliability Issues*, June 20, 2019, at 6.

¹⁶ *Assigned Commissioner's Ruling on Energy Division's State of the Market Resource Adequacy Report*, January 14, 2020, Appendix A at 34, Table 18.

¹⁷ *Id.*

¹⁸ *Assigned Commissioner's Ruling on Energy Division's State of the Market Resource Adequacy Report*, January 14, 2020, Appendix A at 37, Table 23.

report does not specify the prices that LSEs paid to procure system RA for the months with the highest demand.

The Energy Division recently noted that it “expect[s] that the market will continue to tighten.” Few new resources came online in 2019,¹⁹ and they were all contracted with IOUs.²⁰ In addition, LSEs (especially CCAs) increased their purchase of import RA to meet their requirements,²¹ which implies that LSEs found California capacity to be scarce or expensive. LSEs reported import RA as 12-15% of their September 2019 capacity and 8-17% of their September 2020 capacity.²²

The Commission more squarely acknowledged this risk of a tightening market, declaring a potential system-level reliability shortfall by 2021 and requiring expedited procurement to address the shortfall.²³ The 2021 shortfall, however, will not simply appear out of the blue, but will be preceded by a tightening of RA resources both in California and the West.²⁴ Indeed, the California Independent System Operator (“CAISO”) analysis provided in July 2019 tells the story of a tightening market. The CAISO demonstrated little or no surplus capacity in certain hours in 2020, with scarcity increasing in 2021 and 2022.²⁵

Finally, SCE offered an additional justification for a system RA waiver process early in 2019.²⁶ SCE explained:

Given the strong linkage among RA products, in particular, between Local RA and System RA, market power issues affecting

¹⁹ *Id.* at 41.

²⁰ *Id.* at 31.

²¹ *Id.* at 41.

²² *Id.*

²³ *See generally* D.19-11-016.

²⁴ *See* D.19-11-016 at 21.

²⁵ *Comments of the California Independent System Operator Corporation*, July 22, 2019, at 4.

²⁶ *See Comments of Southern California Edison Company (U 338-E) on the Track 3 Proposals and March 12-13, 2019 Workshop*, Mar. 22, 2019, at 1-2; *Waiver Process for System and Flexible*, CPUC Resource Adequacy Track 3 Workshop, Mar. 12-13, 2019. [SCE Workshop Proposal](#)

one product could impact the rest of the RA products. A waiver for Local RA alone, if there is market power for System RA resources, will be insufficient to prevent the exploitation of market power. While LSEs can point to trigger prices for a Local RA waiver, there is no mechanism, let alone a trigger, for System RA. Thus, LSEs would be protected from a non-competitive price for the Local RA attribute of the resource, but would be subjected to a penalty for the very same resource with respect to System RA requirements in a situation in which the resource is pivotal. Since all Local RA resources are System RA resources, they play a critical role in meeting the Local and System attributes of a LSE's RA requirement.²⁷

It thus proposed that the Commission adopt a consistent waiver and penalty structure across all RA products, recognizing the relationship among the products.

The Commission cannot credibly deny that conditions are ripe for market power exercise in the system and flexible RA market. And, as it recognized more than 15 years ago, while it cannot control wholesale prices, it does have tools available to it to prevent subjecting jurisdictional LSEs and their customers to high prices arising under those conditions. The solution to the tightening market cannot be raising the penalty price. If anything, a higher penalty price will further enable sellers to exercise market power, resulting in far higher rates for LSE customers. The Commission should instead extend its existing process for local RA waiver to system and flexible RA, as discussed below.

IV. SYSTEM AND FLEXIBLE RA WAIVER AND PENALTY MITIGATION PROPOSAL

Representatives of CCAs have previously submitted a proposal to Energy Division staff regarding the mechanics and requirements for a system and flexible RA waiver, and CalCCA urges the Commission to adopt this proposal. Specifically, CalCCA proposes that a waiver of

²⁷ *Id.* at 2.

system and flexible RA compliance obligations be granted if the LSE can demonstrate the following:

1. Supply was not available to the LSE at a commercially reasonable price before the compliance deadline.
2. The LSE has taken commercially reasonable actions to obtain system or flexible RA, as applicable, as demonstrated by:
 - a. Documented, robust efforts to procure system or flexible RA, as applicable, through bilateral contracts;
 - b. Participation in multiple utility or third-party solicitations; and
 - c. The LSE's issuance of an RFO for RA products before August 31 of the year preceding the compliance year.

Energy Division Staff will determine, as they do today with local RA waiver requests, whether an LSE has met these requirements. Additionally, a waiver need not be granted if there is insufficient capacity available in the system and the CPUC or CAISO had clearly signaled a potential reliability shortfall to market participants three or more years prior.

CalCCA proposes that requests for system and flexible RA waivers will be handled using the same process used for local RA waivers. LSEs would demonstrate that they qualify for a waiver through a Tier 2 advice letter filing using a Commission-provided template. This template would closely mirror the template used for local RA waiver requests and include the procurement obligation, how much has been contracted and additional information about what has actually been contracted so Staff can have a more complete picture of the deficit and waiver request.

Finally, CalCCA proposes that the framework include penalty mitigation provisions. In the event the Energy Division does not grant an LSE's waiver, but the LSE cures its deficiency after the compliance deadline, no penalties will be applied to the cured quantity.

V. CONCLUSION

For the foregoing reasons, CalCCA requests adoption of its Track 2 proposal addressing compliance waivers and penalties for system and flexible RA.

Respectfully submitted,

CALIFORNIA COMMUNITY CHOICE
ASSOCIATION

A handwritten signature in blue ink that reads "Evelyn Kahl".

Evelyn Kahl
General Counsel

March 18, 2020

APPENDIX A

CALCCA PETITION FOR MODIFICATION OF D.19-09-026



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**BEFORE THE PUBLIC UTILITIES COMMISSION
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Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local and Flexible Procurement Obligations for the 2019 and 2020 Compliance Years.

R.17-09-020

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION
PETITION FOR MODIFICATION OF DECISION 19-06-026**

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R.17-09-020

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION
PETITION FOR MODIFICATION OF DECISION 19-06-026**

Pursuant to Rule 16.4 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the California Community Choice Association (CalCCA)¹ hereby submits this Petition for Modification of Decision (D.)19-06-026 (Track 3 Decision). The Petition is timely filed under Rule 16.4(d).

I. INTRODUCTION AND EXECUTIVE SUMMARY

Current conditions justify establishing a process to provide load serving entities (LSEs) waivers for system and flexible RA compliance obligations in a manner similar to the existing process for waivers of the local RA compliance obligation. CalCCA acknowledges the critical need to secure system and flexible RA resources, as evidenced by its support for an incremental system RA procurement requirement in R.16-02-007. Pending completion of that incremental

¹ California Community Choice Association represents the interests of 19 community choice electricity providers in California: Apple Valley Choice Energy, Clean Power Alliance, Clean Power SF, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Monterey Bay Community Power, Peninsula Clean Energy, Pioneer Community Energy, Pico Rivera Innovative Municipal Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Jacinto Power, San Jose Clean Energy, Silicon Valley Clean Energy, Solana Energy Alliance, Sonoma Clean Power, and Valley Clean Energy.

procurement, however, LSEs face acute scarcity in the system and flexible RA markets and a looming compliance deadline.

CalCCA respectfully requests modification of D.19-06-026 to grant Energy Division Staff the authority to grant waivers of system and flexible RA requirements, beginning with the 2020 compliance year, to individual LSEs that meet Staff-developed criteria and apply for a waiver through a Tier 2 Advice Letter process. Because year-ahead filings are due October 31, 2019, and monthly filings shortly thereafter, CalCCA also requests expedited consideration of this Petition. Finally, CalCCA respectfully requests that if the Petition is granted, the Advice Letter application for a waiver through a Tier 2 Advice Letter process for system and/or flexible RA requirements by individual LSEs be due by November 15, 2019 for the 2020 showing. CalCCA has separately submitted, concurrent with this Petition, a Motion to Shorten Time to Respond to this Petition.

II. BACKGROUND

In Decision 06-06-064, the Commission concluded that “a waiver process is necessary as a market power mitigation measure, and should therefore be adopted as a component of the Local RAR program.”² The Commission established detailed procedures to be followed when an LSE seeks a waiver of its obligation, including:

- (1) a demonstration that the LSE reasonably and in good faith solicited bids for its RAR capacity needs along with accompanying information about the terms and conditions of the Request for Offer or other form of solicitation, and
- (2) a demonstration that despite having actively pursued all commercially reasonable efforts to acquire the resources needed to meet the LSE’s local procurement obligation, it either
 - (a) received no bids, or

² D.06-06-064 at 71.

(b) received no bids for an unbundled RA capacity contract of under \$40 per kW-year or for a bundled capacity and energy product of under \$73 per kW-year, or

(c) received bids below these thresholds but such bids included what the LSE believes are unreasonable terms and/or conditions, in which case the waiver request must demonstrate why such terms and/or conditions are unreasonable.³

While the Commission deemed these elements of the request necessary, it also provided for consideration of other information regarding the reasonableness of the request.⁴

At the time, the Commission also considered the possibility of a system RA waiver, which was proposed by the IOUs.⁵ While the record leaves the reason for its rejection unclear, the rejection may have been driven by the Commission's focus on potential local RA market power.⁶ The Commission also observed: "Our primary task in this decision, then, is to refine and implement the Commission's policy for Local RAR."⁷

The Commission revisited the waiver issue in the process of adopting Local Capacity obligations for 2020-2022 and Flexible Capacity obligations for 2020 in D.19-06-026. The Commission acknowledged commentators who noted a "general agreement that the RA market is tightening"⁸ but declined to permit waivers of Local and System RA obligations, citing "significant, unresolved issues that require further consideration before allowing [system and flexible] waivers, including potential leaning by LSEs and market power issues."⁹

Despite declining to permit waivers, the Commission did recognize in the Track 3 Decision that a tightening RA market may necessitate system and flexible RA waivers "for

³ *Id.* at 73.

⁴ *Id.*

⁵ See D.06-06-064 at 11; see also R.05-12-013, *Administrative Law Judge's Ruling* (April 10, 2006), Attachment (R.05-12-013 Phase 1 Staff Report) at 38.

⁶ See, e.g., *id.* at 35-36.

⁷ D.06-06-064 at 11.

⁸ D.19-06-026 at 18.

⁹ *Id.*

circumstances beyond the control of an individual LSE”¹⁰ in the future. Indeed, the June 20, 2019, ruling in the Integrated Resource Planning (IRP) proceeding, R.16-02-007, sounded an alarm bell over these tightening conditions.¹¹ The ruling summarized:

This section of the ruling describes several recent trends in the bilateral resource adequacy market, as observed by Commission staff. First, many market participants have informally observed a tightening of the bilateral market. In addition, according to Commission staff, there has been a decline in the robustness of competitive solicitations. Finally, a number of LSEs have not been able to comply with the system requirements for the 2019 resource adequacy compliance year.

RA market constraints exist, and they are affecting all LSEs. For the same reasons driving the need for a local RA waiver procedure in 2006, it is time to adopt a system and flexible RA waiver.

III. DISCUSSION

A. The Market for System RA is Seriously Constrained, Making it Difficult for LSEs to Procure Sufficient RA to Meet Commission Requirements.

The Commission’s own decisions and reports recognize constraints in the current RA market. As the Track 3 Decision noted, there has been a dramatic increase in local waiver requests, with requests skyrocketing from only 3 between 2006 and 2017 to 11 requests in both 2018 and 2019.¹² For the 2019 compliance year, eleven LSEs submitted requests for local, system, and flexible waivers, including one IOU and six separate CCAs. Several parties filed comments on the Proposed Decision addressing this concern, with SCE proposing an extension of the waiver process to system and flexible RA in certain circumstances.¹³ NRG acknowledged

¹⁰ *Id.*

¹¹ R.16-02-007, *Assigned Commissioner and Administrative Law Judge’s Ruling Initiating Procurement Track and Seeking Comment on Potential Reliability Issues*, June 20, 2019 (June 20, 2019 Ruling) at 6.

¹² *Id.* At 13.

¹³ Comments of Southern California Edison Company on the Proposed Decision at 2.

that there is a general agreement that the RA market is tightening.¹⁴ In fact, the Commission’s own State of the Resource Adequacy Market report (RA Report) issued in September, 2019,¹⁵ notes that Staff’s analysis indicates the RA market is tight,¹⁶ and “we can expect that the market will continue to tighten.”¹⁷

The IRP proceeding has also addressed the issue of a statewide tightening of the market, as noted above. In the procurement track of the IRP proceeding for 2021, 2022 and 2023 the Commission has identified the need for significant new construction to aid in the looming shortfall of resources.¹⁸ However, the IRP proceeding addresses problems in the long-term — it is unable to assist with short-term deficiencies, such as those faced by LSEs seeking to comply with 2020 compliance deadlines, which is October 31, 2019.

B. Despite Commercially Reasonable Efforts to Comply, Absent a Waiver for System and Flexible RA Requirements LSEs and Their Ratepayers Will Be Burdened with Skyrocketing Prices and Penalties

CCAs are currently making the “commercially reasonable efforts” identified by the Commission to address the shortfall in system and flexible RA capacity. However, these efforts, including solicitations and bilateral market inquiries, are not producing offers at commercially reasonable prices and in some instances, not producing offers at all. The Commission has recognized this decline in robust solicitations. The June 20, 2019, IRP ruling similarly notes that “according to Commission staff, there has been a decline in the robustness of competitive

¹⁴ Comments of NRG on the Proposed Decision at 3.

¹⁵ Energy Division, The State of the Resource Adequacy Market, September, 2019 (RA Report) available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M312/K062/312062524.PDF>

¹⁶ *Id.* at 20.

¹⁷ *Id.*

¹⁸ June 20, 2019 Ruling at 14-15.

solicitations. Finally, a number of LSEs have not been able to comply with the system requirements for the 2019 resource adequacy compliance year.”¹⁹

Thus, CCAs making best efforts to comply with RA procurement obligations are forced to make increasingly difficult choices — either accept unreasonable terms for the small amount of system and flexible capacity that is available, or risk the penalties of non-compliance. In either case, ratepayers suffer, despite the LSE’s best efforts and investment of significant resources to comply. The risk that its RA program could drive unnecessarily inflated costs to ratepayers compels the Commission to act; as it stated in establishing the RA program, the Commission “cannot neglect [its] other primary public duty: protection of ratepayers from excessive charges.”²⁰

San Jose Clean Energy’s experience is but one example. San Jose Clean Energy (SJCE) has documented its efforts to comply with Commission requirements for the 2018 Year-Ahead RA submission.²¹ SJCE undertook diligent efforts to secure the required RA products, including issuing its own solicitations and participating in other entities’ solicitations.²² However, PG&E withdrew product offers after lengthy negotiations, leaving SJCE with significant unmet compliance obligations. Noting that the RA market has no clearing function, SJCE described its inability to find in the market sufficient supply that would offer reasonably priced RA.²³ However, notwithstanding the timely filing of a request for a waiver for its system and local RA deficiencies, SJCE was assessed a large penalty for its deficiencies.

¹⁹ *Id.* at 6.

²⁰ D.04-10-035, p. 15

²¹ Notice of Appeal of City of San Jose, Administrator of San Jose Clean Energy, to Citation E-4195-0052, dated March 29, 2019 (SJCE Notice of Appeal).

²² *Id.* at 2.

²³ *Id.*

SJCE is not alone. The Commission’s statistics on citations also bear out the result of an absence of waivers: the dollar value of citations has also skyrocketed. The total amount of citations has gone from \$150,109 in 2017 to \$9,201,172 in 2019.²⁴

Interestingly, the Commission’s own RA Report notes that “it appears there is currently sufficient capacity on the system, and compliance with RA requirements is possible. . .”²⁵ As noted, however, this is not the experience of CCAs currently running solicitations and seeking to procure sufficient system and flexible RA to meet their compliance obligations. The Commission itself has recognized that compliance with the RA program does not require LSEs to pay any price, but only to obtain RA that is reasonably priced and under reasonable contract terms.²⁶ Thus, while such capacity may *theoretically* be available, it is not available to those LSEs seeking to procure it on reasonable terms in time to meet their compliance deadlines.

C. Multiple Influences May Be Affecting RA Availability

The cause of the marked increase in the need for RA waivers has yet to be determined officially by the CPUC and is the subject of Energy Division staff inquiry. CalCCA asserts that there may be more than one cause.

One cause of scarcity in the system RA market when it is needed -- *i.e.*, in advance of LSE’s compliance deadlines -- may be due to parties’ reluctance to incur penalties under the CAISO Resource Adequacy Availability Incentive Mechanism (RAAIM) program or²⁷ a desire

²⁴ See Energy Citations Issued, Resource Adequacy (RA) Citations, 2019 at https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Safety/Utility_Enforcement/Energy%20Citations%20Issued%20-%2009-16-19.pdf

²⁵ RA Report at 20.

²⁶ “[W]e will not ‘pay any price’ or require utilities to sign contracts that meet these requirements at any cost.” D.04-10-035, p. 15; “We stand by our earlier commitment to ensure that LSEs are not placed in a position whereby they would have to pay any price to acquire the capacity needed for their RA obligations.” D.05-10-042, p. 66

²⁷ CAISO Tariff, 40.9 *et seq.* See also, Comments of Pacific Gas & Electric Company, Resource Adequacy Enhancements, Straw Proposal, Part 2, at 4.

to mitigate the risk of noncompliance. Unfortunately, LSEs appear to be holding back capacity past the date of the RA compliance deadline. As we noted in our Track 3 Proposal, several IOUs did not offer RA for sale until after the October 31 deadline.²⁸

Another cause could be the chilling effect of Decision 19-10-021, which adopted new requirements for import RA products. Uncertainty regarding these requirements may be causing market disruption and effecting scarcity of import RA pending clarification of the rules.

However, there may also be another explanation for the scarcity. The Commission's finding of "adequate" capacity on the system, coupled with both the prices offered in recent CCA solicitations and the small amount of offers received suggests that the conditions may be ripe for the exercise of market power. SJCE voiced its concerns that PG&E's negotiation behavior and withdrawal from SJCE's solicitation may indicate the exercise of market power.²⁹ In its Notice of Appeal, SJCE points to other load-serving entities' expression of similar concerns.³⁰ This risk is particularly evident now, as the market continues to tighten while new build is some time away from coming online to help alleviate the risk of market power exercises.

The same concern was voiced in a letter to the Commission dated June 17, 2019,³¹ from a group of Assembly members and State Senators, who noted that RA pricing has doubled between 2018 and 2019. They suggested that the IOUs' failure to offer excess RA to the market in a timely manner has created an artificial shortage of RA supply. The legislators urged the

²⁸ California Community Choice Association's Track 3 Proposal, R.17-09-020, March 4, 2019 at 6.

²⁹ SJCE Notice of Appeal at 3.

³⁰ *Id.*

³¹ Letter from Assembly members Ash Kalra, David Chiu, Kansen Chu, Evan Low, Mark Stone, and Philip Ting, and State Senators Scott Wiener, Jim Beall, Steven Glazer, Mike McGuire and Willam Monning to Michael Picker, dated June 17, 2019.

Commission, among other things, to expand the waiver process to include waivers for system and flexible RA, in recognition of limited IOU sales of all three RA products.³²

Whatever the cause of the scarcity of capacity in advance of RA compliance deadlines, LSEs are experiencing a significant lack of supply and are therefore failing, despite commercially reasonable efforts, to meet the Commission's established RA requirements. The grant of waivers for system and flexible capacity will both avoid unnecessary rate impacts and will discourage parties from exercising market power going forward.

D. The Commission Should Authorize Energy Division Staff to Grant System and Flexible RA Waivers for the 2020 Compliance Year

Given the urgent nature of this request in the face of a looming deadline, CalCCA requests that the Commission grant Energy Division Staff the broad authority to grant waivers and to develop the criteria for such waivers, beginning with the 2020 compliance year. Representatives of CCAs have previously submitted a proposal to Energy Division Staff regarding the potential mechanics and requirements for a system and/or flexible waiver. CalCCA suggests this proposal be used as a starting point in the development of criteria and process for system and local waivers.

Specifically, CalCCA proposes that a waiver of system and/or flexible RA compliance obligations be granted to an LSE if the LSE can demonstrate to staff's satisfaction the following:

1. Supply was not available to the LSE at a commercially reasonable price before the compliance deadline; and
2. The LSE has taken commercially reasonable actions to obtain system and/or flexible RA, as follows:
 - a. Documented efforts to procure system RA through bilateral contracts;
 - b. Participated in utility solicitations; and

³² *Id.*

- c. Issued an RFO for RA products before August 31 of the year in which compliance must be shown.

CalCCA further proposes that penalties will be mitigated if the LSE does not receive a waiver and the LSE cures its deficiency after the compliance deadline. In addition, no waiver need be granted if clear notice of a collective deficiency has been made available to market participants by the CAISO or Commission three years or more prior to the reliability year.

CalCCA proposes that requests for system and flexible waivers be handled using the same method as that applicable to Local RA waivers. LSEs would demonstrate that they qualify for a waiver through a Tier 2 advice letter filing using a Commission-provided template. This template would closely mirror the template used for Local RA waiver requests and include the procurement obligation, how much has been contracted and additional information about what has actually been contracted so Staff can have a more complete picture of the deficit and waiver request.

IV. CONCLUSION

For the foregoing reasons, CalCCA respectfully requests the Commission modify D.19-06-26 to grant Energy Division Staff the authority to grant waivers of system and flexible RA requirements to individual LSEs that meet the Staff-developed criteria and apply for a waiver through a Tier 2 Advice Letter process. Due to looming compliance deadlines, and the possible accrual of noncompliance penalties, CalCCA also respectfully requests expedited consideration of this Petition. Finally, CalCCA requests that if the Petition is granted, the application for a waiver through a Tier 2 Advice Letter process for system and/or flexible RA requirements by individual LSEs be due by November 15, 2019 for the 2020 showing.

Respectfully submitted,

A handwritten signature in black ink that reads "Evelyn Kahl". The signature is written in a cursive style with a large initial 'E' and 'K'.

Counsel for California Community Choice
Association

October 30, 2019

EXHIBIT A

Proposed Modification to D.19-06-026

3.4.2 Advice Letter Process for Waivers

(6th paragraph):

~~Lastly, because the Commission declines to extend the waiver process to system and flexible RA at this time, we emphasize that any waiver request nonetheless submitted for system or flexible RA deficiencies will be automatically rejected.~~

Ordering Paragraph 8:

Local, system, or flexible Resource Adequacy (RA) waiver requests shall be submitted via a Tier 2 Advice Letter to the Commission with accompanying service to the service list (in redacted form, if necessary) of the RA proceeding open at the time of the request. The Energy Division shall develop and administer the system and flexible RA waiver process, including the granting of compliant waiver requests, in a manner similar to the process for local RA waivers. This process shall be developed and provided to LSEs by the end of 2019 and waivers shall be made available beginning with the 2020 compliance year.

APPENDIX B

PG&E RESPONSE TO CALCCA PETITION



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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local and Flexible Procurement Obligations for the 2019 and 2020 Compliance Years.

R.17-09-020
(Filed September 28, 2017)

**RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) TO
CALIFORNIA COMMUNITY CHOICE ASSOCIATION PETITION FOR
MODIFICATION OF DECISION 19-06-026**

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Dated: November 12, 2019

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local and Flexible Procurement Obligations for the 2019 and 2020 Compliance Years.

R.17-09-020
(Filed September 28, 2017)

**RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) TO
CALIFORNIA COMMUNITY CHOICE ASSOCIATION PETITION FOR
MODIFICATION OF DECISION 19-06-026**

I. INTRODUCTION

Pursuant to Rule 16.4(f) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”)^{1/} and Administrative Law Judge Debbie Chiv’s *Email Ruling Granting CalCCA’s Motion to Shorten Time to Respond to the Petition for Modification*, dated October 31, 2019 (“Email Ruling”), Pacific Gas and Electric Company (“PG&E”) respectfully submits this response to the *California Community Choice Association Petition for Modification of Decision 19-06-026*, filed on October 30, 2019 (“Petition”).

The Petition requests modifications to Decision 19-06-026 related to the establishment of a waiver-of-penalties process for failures associated with system and flexible resource adequacy (“RA”) obligations. In this response, PG&E does not offer specific comments regarding California Community Choice Association’s (“CalCCA”) requested modifications. Rather, PG&E’s response is directed toward the Petition’s unsupported factual allegations regarding PG&E, which make incorrect insinuations regarding PG&E’s conduct. These factual allegations are not only procedurally deficient, they are disputed by PG&E. As a result, the Commission should not base any of its findings, conclusions, or orders on these procedurally deficient and untrue factual allegations.

^{1/} All other references to Rules in this pleading are references to the Rules of Practice and Procedure of the Commission, unless otherwise noted.

II. THE COMMISSION SHOULD DISREGARD CALCCA’S UNSUPPORTED FACTUAL ALLEGATIONS REGARDING PG&E BECAUSE THEY ARE PROCEDURALLY DEFICIENT AND DISPUTED

As described below, the Petition’s factual allegations related to PG&E fail to comply with the requirements in Rule 16.4(b), are subject to dispute, and should be afforded no weight.

A. The Petition’s factual allegations related to PG&E fail to comply with the requirements in Rule 16.4(b)

Rule 16.4(b) provides that any petition for modification that makes factual allegations “must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.”^{2/} The Commission has previously dismissed a petition for modification that failed to comply with these requirements.^{3/}

The Petition asserts that “[c]urrent conditions justify establishing a process to provide load serving entities (LSEs) waivers for system and flexible RA compliance obligations . . .”^{4/} In support of this assertion, the Petition claims that (1) “Despite Commercially Reasonable Efforts to Comply, Absent a Waiver for System and Flexible RA Requirements LSEs and Their Ratepayers Will Be Burdened with Skyrocketing Prices and Penalties” and (2) “Multiple Influences May Be Affecting RA Availability.”^{5/} CalCCA offers a number of procedurally defective factual allegations regarding PG&E in support of these claims, each of which is addressed below.

First, to bolster the claim regarding LSEs making commercially reasonable efforts to comply with system and flexible RA obligations, the Petition provides certain information related to PG&E and San Jose Clean Energy (“SJCE”). Without any citation, the Petition makes the following factual allegation: “. . . PG&E withdrew product offers after lengthy negotiations, leaving SJCE with significant unmet compliance obligations.”^{6/} The Petition provides no evidence

2/ Rule 16.4(b).

3/ Decisio Rule 16.4(b).n 00-04-002 (ordering dismissal of a petition for modification without prejudice for failure to comply with the Rules related to support for factual allegations).

4/ Petition, p. 1.

5/ *Id.*, pp. 5, 7.

6/ *Id.*, p. 6.

to support these factual allegations about PG&E's actions (regardless of their truth or accuracy) nor to support the truth or accuracy of the implication that PG&E's actions directly resulted in a compliance failure by a community choice aggregator ("CCA"). Thus, CalCCA fails to support this factual allegation properly in compliance with Rule 16.4(b), and it should be rejected if this procedural defect is not cured.

Second, as part of the claim that "Multiple Influences May Be Affecting RA Availability," the Petition re-states factual allegations by SJCE from a pending citation appeal proceeding about "... PG&E's negotiation behavior and withdrawal from SJCE's solicitation."^{7/} The Petition relies on this unsupported factual allegation about "PG&E's negotiation behavior and withdrawal" to insinuate that PG&E is a bad actor manipulating the capacity market, yet the Petition provides no evidence to support the truth or accuracy of this serious factual allegation. Moreover, the Petition attempts improperly to cite untested factual statements about "PG&E's negotiation behavior and withdrawal" from SJCE's filing in a different proceeding (in which no party to this proceeding has had any opportunity to cross-examine or provide rebuttal) to suggest that PG&E exercised market power to affect RA availability.^{8/} Such factual allegations fail to comply with the requirements in Rule 16.4(b) (which requires that factual allegations in a petition for modification must be properly supported) and should be rejected if this procedural defect is not cured.

In a further attempt to strengthen the claim that "Multiple Influences May Be Affecting RA Availability," the Petition cites to a letter sent (but not filed or served on the service list in this proceeding) on June 17, 2019, by several legislators that represent CCAs to former-President Michael Picker, to make even more unsupported factual allegations related to PG&E.^{9/} The Petition states that these legislators "suggested that the IOUs' failure to offer excess RA to the market in a timely manner has created an artificial shortage of RA supply."^{10/} The Petition's clear

7/ *Id.*, p. 8.

8/ *Ibid.* CalCCA also cites to the pending SJCE citation appeal proceeding regarding similar unsupported factual allegations by other load-serving entities. *Ibid.*

9/ *Id.*, pp. 8-9.

10/ *Id.*, p. 8.

intent is to convince the Commission that the factual allegations in the undocketed letter regarding investor-owned-utilities' ("IOU") "failure to offer excess RA" (and the results of such "failure") are true, but the Petition provides no evidence supporting the truth or accuracy of the allegations. There is nothing in the Petition that properly supports a factual allegation that IOUs unreasonably or impermissibly withheld RA and, thereby, created "an artificial shortage of RA supply." Thus, CalCCA fails to support these factual allegations properly in compliance with Rule 16.4(b), and they should be rejected if this procedural defect is not cured.

In addition, the Petition does not provide adequate support in accordance with Rule 16.4(b) for the factual allegations regarding LSEs "holding back capacity past the date of the RA compliance deadline" and IOUs "not offer[ing] RA for sale until after the October 31 deadline."^{11/} CalCCA provides no citation for the factual allegation related to LSEs holding back capacity past the date of the RA compliance deadline. The only citation provided in support of the factual allegation related to IOUs not offering RA for sale until after the October 31 deadline is to CalCCA's own proposal in Track 3, which itself contains no support for this factual allegation.^{12/} PG&E acted in a manner consistent with PG&E's Commission-approved Bundled Procurement Plan ("BPP"), which includes the criteria, standards and timing for PG&E's management and sales of RA products. PG&E has offered RA for sale in accordance with its BPP, including offers of RA for sale prior to and after the October 31 deadline. Thus, the Petition's factual allegations on these matters are not properly supported in accordance with Rule 16.4(b) and should be disregarded if this procedural defect is not cured.

None of the factual allegations described above are appropriately supported in accordance with the requirements in Rule 16.4(b). There are no specific citations to the record in this proceeding in support of these factual allegations. The Petition does not seek official notice of any of these factual allegations, and none of these allegations may be officially noticed under applicable law. The Petition contains no declaration or affidavit in support of any alleged new or

11/ *Ibid.*

12/ *California Community Choice Association's Track 3 Proposal*, dated March 4, 2019, p. 6.

changed facts. Thus, the Petition is procedurally deficient with respect to all factual allegations regarding PG&E, and the Commission should disregard all such factual allegations in making its findings, conclusions, and orders on the Petition.

B. PG&E disputes many of the Petition’s factual allegations related to PG&E

PG&E disputes many of the Petition’s factual allegations about PG&E described above. PG&E believes that PG&E’s actions did not directly result in a compliance failure by SJCE. PG&E further believes that PG&E’s actions with respect to SJCE’s solicitation do not indicate the exercise of market power, and PG&E did not and would not exercise any market power. Further, PG&E believes that it did not fail to offer excess RA to the market in a timely manner, nor impermissibly “hold[] back capacity past the date of the RA compliance deadline” in 2018 or 2019, nor create an artificial shortage of RA supply. While the Commission may consider supported factual allegations set forth in the Petition that are unrelated to PG&E, the Commission should not base any of its findings, conclusions, or orders on the Petition’s unsupported factual allegations and insinuations regarding PG&E.

With respect to the factual allegations drawn from both the SJCE citation appeal proceeding and the letter from several legislators that represent CCAs, PG&E notes that such factual allegations are hearsay and have not been subject to appropriate discovery or cross-examination. Regarding the SJCE citation appeal proceeding in particular, PG&E appeared at the prehearing conference in that proceeding in order to “understand how [PG&E] might be able to participate on a going-forward basis in the proceeding, if at all, in connection with the allegations made related to the company.”^{13/} PG&E expressed that “it is necessary to correct the record on those allegations.”^{14/} Thus, PG&E clearly indicated on the record in that proceeding that SJCE’s claims are disputed. CalCCA should not be permitted to offer factual statements claiming PG&E misconduct from the citation appeal proceeding when PG&E had no opportunity to conduct discovery or cross-examine witnesses regarding such statements, or to provide its own statements

13/ K.19-03-024, *Prehearing Conference*, dated May 3, 2019, p. 15, lines 10-15.

14/ *Id.*, p. 17, lines 18-19.

contradicting SJCE's claims. It would be improper as a legal matter for SJCE's statements (or the statements in the letter from legislators) to be utilized as proof of the matters asserted in this proceeding. The Commission should require CalCCA to comply with Rule 16.4(b) with respect to all factual allegations in the Petition.

III. CONCLUSION

PG&E appreciates the opportunity to provide this response to the Petition. As described above, the Petition contains unsupported factual allegations regarding PG&E that must be disregarded as procedurally deficient. The Commission should not base any of its findings, conclusions, or orders on these unsupported factual allegations and insinuations related to PG&E.

Respectfully Submitted,

NOELLE R. FORMOSA

By: */s/ Noelle R. Formosa*

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APPENDIX C

IEPA RESPONSE TO CALCCA PETITION



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local and Flexible Procurement Obligations for the 2019 and 2020 Compliance Years.

Rulemaking 17-09-020
(Filed September 28, 2017)

**RESPONSE OF THE INDEPENDENT ENERGY
PRODUCERS ASSOCIATION TO THE PETITION OF THE
CALIFORNIA COMMUNITY CHOICE ASSOCIATION
FOR MODIFICATION OF DECISION 19-06-026**

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Dated: November 12, 2019

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local and Flexible Procurement Obligations for the 2019 and 2020 Compliance Years.

Rulemaking 17-09-020
(Filed September 28, 2017)

**RESPONSE OF THE INDEPENDENT ENERGY
PRODUCERS ASSOCIATION TO THE PETITION OF THE
CALIFORNIA COMMUNITY CHOICE ASSOCIATION
FOR MODIFICATION OF DECISION 19-06-026**

In its October 30 Petition for Modification of Decision 19-06-026 (Petition), the California Community Choice Association (CalCCA) asks the Commission to delegate to the Energy Division Staff the authority to grant the requests of individual Load-Serving Entities (LSEs) for waivers of system and flexible Resource Adequacy (RA) requirements, beginning with the 2020 compliance year, and to develop criteria for considering any such waiver requests.¹ CalCCA also asks the Commission to enable LSEs to seek waivers for system and flexible RA compliance requirements through a Tier 2 Advice Letter.² Moreover, CalCCA proposes that the criteria to be adopted by the Staff should be based on a CalCCA proposal previously submitted to the Energy Division Staff.³

As justification for its Petition, CalCCA suggests that the market for system RA capacity is seriously constrained, making it difficult for LSEs to procure sufficient RA capacity to meet

¹ By email ruling dated October 31, 2019, the Administrative Law Judge directed parties to serve and file responses to the Petition by November 12, 2019.

² Petition, p. 2.

³ Petition, p. 9.

the Commission's requirements.⁴ CalCCA asserts that unless the Commission adopts a waiver process for system and flexible RA requirements similar to the existing waiver process for local RA requirements, ratepayers will be burdened with skyrocketing prices and penalties.⁵ CalCCA notes that the cause for the increased need for RA waivers has yet to be determined by the Commission.⁶

While it deliberates on CalCCA's Petition, the Commission should keep in mind that each granted waiver means that some quantity of the capacity that the California Independent System Operator (CAISO) has determined is needed for the reliable operation of the electric grid must be obtained through mechanisms other than the operation of the bilateral capacity market. When reliability is threatened by shortages of procured capacity, the CAISO must resort to its Capacity Procurement Mechanism or in some cases Reliability Must-Run contracts to obtain necessary amount and type of capacity.

IEP opposes the Petition for the reasons stated below.

I. CalCCA's Petition Fails to Provide Justification for the Requested Relief

CalCCA justifies its requested relief for system and flexible RA by referring to an increase in local RA waiver requests from three in 2006-2017 to eleven in 2018-2019. IEP notes that the submission of multiple local RA waiver requests by jurisdictional LSEs by itself is not sufficient justification for the significant changes CalCCA seeks to system and flexible RA requirements. Even if a recent increase in local RA waiver requests is viewed as evidence of a need for emergency changes in the compliance program for system and flexible RA, as CalCCA requests, CalCCA's proposal to extend the waiver process to system and flexible RA requires a

⁴ Petition, p. 4.

⁵ Petition, p. 5.

⁶ Petition, p. 7.

more extensive consideration than is allowed by the limited function of a petition for modification.

The Petition asserts that LSEs face “acute scarcity” in the system and flexible RA markets and a looming compliance deadline.⁷ Yet the Petition fails to provide any public factual data in support of its allegations or to offer specific citations to the record in this proceeding that would allow the Commission (and other parties) to assess whether acute scarcity exists.

Based on its contention that acute scarcity exists, the Petition asserts that current market conditions justify establishing a process to provide LSEs with waivers from the Commission’s rules designed to ensure grid reliability. While retirements of generating units and changing regulatory requirements might have contributed to a reduction of the supply of RA capacity, the assertion of acute scarcity ought to be tested more thoroughly and supported with verifiable facts.

Moreover, one cause of a tightening capacity market might be a failure by LSEs individually and collectively to support the development of new generating resources that could replace retiring units and provide the system and flexible capacity necessary to meet the CAISO’s (and the LSEs’) resource adequacy requirements. Certainly, the tightening of markets is not an unexpected phenomenon in light of the retirement of certain existing resources (ordered by the State Water Resources Control Board in 2012) and the general failure to replace retiring resources. The Commission should fully and thoroughly consider the specific facts and circumstances that contribute to tight markets before granting the remedies sought by the Petition.

⁷ Petition, p. 2

II. The Issues Raised by CalCCA Deserve a Full Review and Deliberation

The Commission recently acknowledged parties' concerns that the resource adequacy market is "tightening," as noted by CalCCA.⁸ Based upon the evidence, however, the Commission as recently as June declined to adopt waiver protocols for system and flexible RA compliance requirements pending further deliberation and consideration.⁹ IEP concurs that further deliberation and consideration is required; however, this consideration ought to occur in a forum that allows the issues and remedies proposed by CalCCA to be considered as part of a broader consideration of refinements to the Commission's RA Framework. The limited scope of and opportunity for response to a petition for modification does not allow for the necessary review and consideration of such significant proposals.

On November 7, the Commission approved an Order instituting a new rulemaking, R.19-11-009, to oversee the resource adequacy program, consider program refinements, and establish forward resource adequacy procurement obligations. The new RA proceeding provides the appropriate venue to consider the RA Framework, including matters associated with proposed waivers of system or flexible RA obligations.

III. The Petition's Proposal for Energy Division Staff to Develop Criteria for System and Flexible RA Waiver Program Is Unreasonable at this Time

The Petition proposes to delegate to Energy Division Staff the responsibility for developing the criteria to guide LSE submission of waiver requests for system and flexible RA outside of an active RA proceeding. In addition, Petition proposes to empower the Energy Division to determine the validity of any system and flexible waiver requests and to establish

⁸ Petition, p. 4.

⁹ Decision 19-06-026, p. 18.

critical standards for review of waiver requests, including what constitutes a “commercially reasonable price” for system and flexible RA and “reasonable action” in RA procurement.¹⁰

IEP is concerned that the Petition and the proposed remedies, if granted, will undermine the Commission’s deliberative approach to developing a holistic RA Framework in light of existing conditions. Critical components of the Commission’s RA Framework include setting procurement obligations and establishing and enforcing penalties and sanctions for non-compliance. These are fundamental aspects to any procurement compliance framework, and they are integrated; one aspect should not be considered in isolation from the other. For example, as part of the review delegated to the Energy Division under the Petition’s proposal, the Energy Division would need to determine (a) what constitutes a “good faith” procurement effort; (b) at what offer price LSEs may decline to procure resources needed to ensure grid reliability; (c) what is a suitable waiver penalty price for system and flexible RA; and (d) what standards will apply to the review of an LSE’s assertions that bids or conditions of supplier offers are unreasonable in light of the need to ensure grid reliability.

Finally, the Petition asks the Commission to modify its approach to compliance (penalties, sanctions, and waivers) outside of any consideration of other refinements to the Commission’s adopted RA Framework. However, the consideration of penalties, sanctions, and waivers ought to be fully integrated into the broader consideration of RA programmatic refinements outlined in the new RA proceeding. Moreover, these matters require the exercise of discretion that properly is exercised by the Commission and should not be delegated to the Energy Division, as requested by CalCCA.

¹⁰ Petition, p. 9.

IV. Rules Establishing the RA Program, Including LSE Obligations and Availability of Waivers, Have Long Been in Place

The Petition asserts that despite LSEs' commercially reasonable efforts to comply with their RA compliance obligations, LSEs and their ratepayers will be burdened with skyrocketing prices and penalties absent a waiver of system and flexible RA requirements.¹¹ As evidence of this harm, the Petition notes that the total amount of citations associated with deficiencies in Local RA have increased from \$150,109 in 2017 to \$9,201,172 in 2019.¹² The increase in the amount of citations, however, is evidence of a failure to procure RA capacity or to obtain a waiver. This increase should have sent LSEs a compelling signal that the Commission intends to enforce RA procurement requirements, which should have provided a greater motivation for LSEs to procure needed resources in response to a tightening of RA markets. This signal is exactly what the Commission intended when it designed its penalty and waiver program for local RA.

Moreover, the fact that energy markets are volatile and prone to scarcity in the absence of new investment is not a new development. The Commission concluded in 2006 that a waiver process is necessary for local RA requirements due to a number of risks, including market power mitigation. At the same time, however, the Commission did not adopt a waiver protocol for system RA.¹³ Thus, the Commission's expected standards for procurement of local and system RA capacity have been clear for over a decade, well before the creation of most of the CCAs serving load today. Certainly, the risk that RA markets might tighten has been apparent since adoption of the State Water Resources Control Board's Once-Through-Cooling (OTC) policy in 2012 and the retirement of San Onofre Nuclear Generating Station Units 2 and 3 in 2013. LSEs

¹¹ Petition, p. 5.

¹² Petition, p. 7.

¹³ Decision 06-06-064 predated the development of a Flexible RA compliance obligation.

in general and CCAs in particular should not be surprised that their RA procurement obligations will be enforced, or that in times of resource scarcity, prices in energy markets tend to reflect that scarcity.

The Commission's approach to ensuring grid reliability when load is increasingly disaggregated among diverse LSEs, including CCAs, has been to set clear requirements for system and flexible resources and impose penalties for non-compliance. LSEs should not be surprised by these requirements or these penalties as they are fundamental to the Commission's approach to ensuring grid reliability. Timely procurement lies at the heart of this framework. The Petition is not the appropriate vehicle to review and consider fundamental changes to the penalty and waiver components of the RA Framework.

V. Conclusion

IEP respectfully opposes CalCCA's Petition for Modification of Decision 19-06-026. Resolution of these matters raised in the Petition ought to come through a more extended consideration in the new RA proceeding, not through the expedited process and limited scope of a petition for modification.

Respectfully submitted November 12, 2019, at San Francisco, California.

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APPENDIX D

CALADVOCATES RESPONSE TO CALCCA PETITION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to Oversee
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Rulemaking 17-09-020

**RESPONSE OF THE PUBLIC ADVOCATES
OFFICE TO THE CALIFORNIA COMMUNITY CHOICE ASSOCIATION PETITION
FOR MODIFICATION OF DECISION 19-06-026**

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November 12, 2019

I. INTRODUCTION

Pursuant to Rule 16.4(f) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits this response to the Petition for Modification (Petition) of Decision (D.) 19-06-026 filed by the California Community Choice Association (CalCCA) on October 30, 2019. CalCCA also filed a Motion to Shorten Time to Respond to the Petition requesting that parties' responses be due by November 5, 2019.¹ Administrative Law Judge (ALJ) Chiv granted the motion with modifications, ruling that parties must file responses to the Petition by November 12, 2019. Thus, this filing is timely.

The Public Advocates Office recommends that the Commission reject the Petition and, instead, address system and flexible Resource Adequacy (RA) waivers within the ongoing RA proceeding, Rulemaking (R.) 17-09-020.

II. DISCUSSION

A. **CalCCA submits no new factual support to justify the requested modifications.**

The Commission directly addressed system and flexible RA waivers in D.19-06-026 and stated that there "remain significant, unresolved issues that require further consideration before allowing such waivers, including potential leaning by LSEs and market power issues."² The Commission declined to extend the waiver process to system and local RA and encouraged further discussion of issues through workshops or in a later phase of the proceeding.³ Rule 16.4 requires that a petition for modification must state the justification for the requested relief, factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed, and allegations of new or changed facts must be supported by an appropriate declaration or affidavit.⁴ CalCCA has not submitted supporting declarations, affidavits, or citations to the record to justify modifications to the Decision. CalCCA does not offer new information that addresses the concerns raised by the Commission in declining to

¹ CalCCA Motion to Shorten Time to Respond to CalCCA's PFM of D. 19-06-026, p. 1.

² D.19-06-026, p. 18.

³ Ibid.

⁴ See Commission Rules of Practice and Procedure, Rule 16.4(b).

extend the waivers to system and flexible RA. Instead, CalCCA discusses concerns raised in the Integrated Resource Planning (IRP) proceeding regarding RA market constraints;⁵ however, this information was already readily available when the Commission adopted the Decision. CalCCA also notes that the Commission Staff’s RA Report issued in September 2019 reported a tight RA market that is expected to continue to tighten⁶ but the same report also states that there is currently sufficient capacity on the system and compliance with RA requirements is possible.⁷ The Petition does not provide justification for the requested modifications beyond the information already raised and considered by the Commission, and should be rejected.

B. The Commission should continue to address system and flexible RA waivers within the RA proceeding.

CalCCA proposes that the Commission grant “Energy Division Staff the broad authority to grant waivers and to develop the criteria for such waivers, beginning with the 2020 compliance year.”⁸ CalCCA’s proposal would lead to the development of criteria for system and flexible RA waivers through an opaque process without opportunities for input from parties. CalCCA essentially proposes the implementation of an unknown policy regarding system and flexible RA waivers such that parties will not understand the criteria for review, making it difficult for parties to determine whether any Advice Letters require protest and more in-depth Commission consideration.

System and flexible RA waivers are active issues within the RA proceeding. Parties recently discussed concerns with adopting such waivers during the September 5, 2019 RA workshop.⁹ The Commission should consider proposals for waivers and formally adopt any policy regarding waivers transparently through the RA proceeding.

III. CONCLUSION

The Public Advocates Office recommends that the Commission reject the Petition and address system and flexible RA waivers within the RA proceeding.

⁵ CalCCA Petition, p. 4.

⁶ Id., p. 5.

⁷ Id., p. 7.

⁸ Id., p. 9.

⁹ Staff Presentation in RA Proceeding, September 5, 2019.

Respectfully submitted,

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