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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
COMMENTS ON THE PROPOSED DECISION ADOPTING
LOCAL CAPACITY OBLIGATIONS FOR 2021-2023, ADOPTING FLEXIBLE
CAPACITY OBLIGATIONS FOR 2021, AND REFINING THE RESOURCE
ADEQUACY PROGRAM**

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SUMMARY OF RECOMMENDED CHANGES

1. Recognizing the tight supply conditions in the system resource adequacy (“RA”) market, adopt a waiver process for 2020 and 2021 for load serving entities (“LSEs”) that take commercially reasonable actions to procure sufficient system RA but fail to achieve full compliance for reasons beyond their control. Revisit the waiver process in 2021 to determine whether conditions compel a continuation of the waiver process.
2. To prevent a wealth transfer from customers to generators under the current tight supply conditions in the system RA market, defer the implementation of shaped summer-month and winter-month system RA non-compliance penalties until 2022, when new Procurement Track system RA supply will be online.
3. To provide adequate notice to LSEs of their compliance obligations, clarify whether Month-Ahead waiver requests for “PG&E Other” subarea requirements are required, what standards and process will be applied to such waiver requests, and when the new requirements will be implemented.
4. To provide adequate notice to LSEs of their compliance obligations, clarify that unless otherwise specified, all new requirements proposed by the PD will be effective for the 2021 Compliance Year and will not be applied in 2020.

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ADEQUACY PROGRAM**

The California Community Choice Association (“CalCCA”)¹ submits these comments pursuant to Rule 14.3 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure on the May 22, 2020, proposed *Decision Adopting Local Capacity Obligations for 2021-2023, Adopting Flexible Capacity Obligations for 2021, and Refining the Resource Adequacy Program* (“PD”).

I. INTRODUCTION

CalCCA appreciates the Commission’s review and aggregation of a broad range of significant RA program reforms within this proceeding. On balance, CalCCA supports several elements of the PD, including the following measures:

- The proposed Local Capacity Requirements for 2021-2023,² the proposed Flexible Capacity Requirements for 2021;³

¹ California Community Choice Association represents the interests of 20 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, Valley Clean Energy, and Western Community Energy.

² PD, Ordering Paragraphs 1-3 at page 73.

³ PD, Ordering Paragraph 8 at page 74.

- The establishment of the proposed Working Group on local capacity issues;⁴
- The definitions and counting methodologies for in-front-of-the-meter hybrid resources and co-located resources;⁵ and
- The MCC definitions and modified Option 4b MCC bucket proposal.⁶

CalCCA requests several modifications to the PD, however, to improve the penalties system proposed by the PD and generally to clarify implementation details. More specifically, the Commission should:

- Adopt a waiver process for LSEs taking commercially reasonable actions to procure sufficient system RA but failing to achieve full compliance for reasons beyond their control;
- Defer the implementation of shaped system penalties until 2023;
- Clarify the standards and process for seeking a local RA waiver for “PG&E Other” subarea requirements; and
- Clarify the timing and process for the proposed compliance changes.

Proposed Conclusions of Law and Ordering Paragraphs are provided in Appendix A.

II. THE COMMISSION SHOULD ADOPT A WAIVER PROCESS FOR LSES TAKING COMMERCIALY REASONABLE ACTIONS TO PROCURE SUFFICIENT SYSTEM RA

CalCCA proposed expanding the existing local RA waiver process to include system and flexible RA compliance in a petition for modification of D.19-06-026, which to date has not been addressed.⁷ CalCCA renewed its request in Track 2 comments.⁸ CalCCA based its request on the serious constraints in the system RA market that are making it difficult for LSEs to meet their system requirements despite commercially reasonable efforts. CalCCA observed that expanding the waiver process to system RA would be consistent with the Commission’s long-standing 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.”⁹ The PD rejects this proposal on grounds that “a system and flexible waiver process requires further development and study,”¹⁰

⁴ PD, Ordering Paragraphs 4-6 at page 73.

⁵ PD, Ordering Paragraphs at 11-12 at page 75.

⁶ PD, Ordering Paragraph at 17-18 at pages 77-78.

⁷ *See generally* California Community Choice Association Petition for Modification of Decision 19-06-026, Oct. 30, 2019. CalCCA Comments at 16-17.

⁸ CalCCA Comments at 16-17.

⁹ CalCCA Comments at 16 (*quoting* D.05-10-042 at 66).

¹⁰ PD at 58.

noting in particular concerns regarding “potential leaning by LSEs and market power issues.”¹¹ CalCCA urges the Commission – particularly in light of the reduction in available system RA created by recent Commission initiatives -- to examine the issue more closely and direct the development of a system RA waiver process to be in place for Compliance Year 2021.

As an initial matter, the PD lacks coherent reasoning. The PD’s suggestion that the system waiver raises market power concern is directly at odds with D.06-06-064, which expressly adopted the local RA waiver as a tool to address market power.¹² In addition, a waiver process does not permit leaning; the criteria for granting waivers are intended to ensure that the non-compliant LSE acted in good faith.

In addition, a system waiver is critical in the face of the Commission’s marked tightening over the past year of already-constrained system RA supply. In D.19-06-026,¹³ the Commission reduced the Effective Load Carrying Capability (“ELCC”) for solar and wind resources. Based on estimated calculations performed by East Bay Community Energy, the new ELCCs eliminated eligible system RA supply ranging from 120 MW in December to 3,493 MW in October.¹⁴ The PD proposes to potentially compound this reduction of qualifying capacity from hydro resources, ranging from 527 MW for February to 1,224 MW for June.¹⁵ The proposed import RA decision in R.17-09-020 would exacerbate the effects of these reductions, eliminating 597 MW of supply in February to 1,934 MW in September. Combined, these reductions create a net deficit in summer months ranging from 531 MW to 5,837 MW in September. Combined,

¹¹ PD at 59.

¹² D.06-06-064, Conclusion of Law 27 at 86 (“A waiver process is necessary as a market power mitigation measure, and should therefore be adopted as a component of the Local RAR program.”).

¹³ D.19-06-026, Ordering Paragraph 19 at page 64.

¹⁴ 2021 Generation Estimate derived from 2020 NQC reports (updated with retirements, resource additions and import volumes). Hydro Losses under the proposed counting methodology are estimated as a 30% reduction in shown hydro in the 2019 State of the Resource Adequacy Market Report (“RA Market Report”). Based on recent indications from counterparties, monthly percentages of total shown imports from the RA Market Report are discounted by 30% to estimate import losses. ELCC impacts are calculated as the difference between the prior and updated ELCC percentages applied to 2020 NQC solar and wind resources.

¹⁵ R.19-11-009, Proposed *Decision Adopting Local Capacity Obligations for 2021-202, Adopting Flexible Capacity Obligations for 2021, and Refining the Resource Adequacy Program*, May 22, 2020, at 21-22 and Ordering Paragraph 10 at 75. CalCCA does not oppose the proposed methodology but highlights that reactionary steps from the assumed immediate reductions in NQC should not be made without robust analysis.

these reductions create a net deficit in summer months ranging from 531 MW in July to 5,837 MW in September.

Figure 1. Estimated RA Supply Reductions Due to Recent and Proposed Rule Changes

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2021 Generation Estimate	42,982	43,165	45,173	47,693	48,740	53,003	53,768	52,857	51,463	47,295	42,791	42,832
2021 Demand Requirement	36,510	35,540	34,568	37,382	41,723	46,963	50,711	51,026	51,542	42,590	36,452	37,632
Surplus / Deficit	6,472	7,625	10,605	10,311	7,017	6,040	3,057	1,831	(79)	4,705	6,339	5,200
CPUC Eligibility Reductions												
Hydro Losses	(635)	(527)	(758)	(689)	(795)	(1,209)	(1,224)	(1,193)	(1,119)	(750)	(630)	(630)
Import Losses	(663)	(597)	(624)	(521)	(824)	(1,082)	(1,630)	(1,686)	(1,934)	(1,281)	(640)	(729)
Solar Losses	410	110	807	(1,861)	(1,550)	(1,420)	(302)	(1,422)	(1,972)	(3,432)	(228)	26
Wind Losses	178	(296)	607	(365)	(365)	(916)	(431)	(368)	(733)	(61)	242	(120)
Total Losses	(710)	(1,310)	32	(3,436)	(3,535)	(4,626)	(3,588)	(4,669)	(5,758)	(5,523)	(1,256)	(1,453)

There is no near-term solution to address the deficits produced by the Commission’s modification of the RA compliance framework until new resources begin to come online 2021 and 2022 in response to D.19-11-016.

As a result, LSEs undeniably face a reduction in available RA and a potential system RA shortage in 2021, which could extend into 2022; this shortage was, in fact, the basis for D.19-11-016.¹⁶ Penalizing LSEs who, despite commercially reasonable efforts, are unable to meet their requirements will not add capacity to the market in the near term. In these circumstances, the penalties lose their intended purpose of driving the right behavior and become merely punitive, directly increasing ratepayer costs. The Commission can avoid this result by simply extending existing rules to system RA. Adopting a system RA waiver presents little risk; it does not *require* the Commission to grant a waiver unless its criteria are met.

Establishing a system RA waiver mechanism ensures, like the local RA mechanism, that critical circumstances are considered in determining whether to impose a penalty. The general purpose of a penalty, as the Energy Division¹⁷ and prior Commission decisions¹⁸ observe, is to create an incentive to avoid violations. Given this objective, the Commission historically has considered the conduct of the entity in non-compliance.¹⁹ Indeed, this is precisely what the

¹⁶ D.19-11-016, Finding of Fact 5 at 69.

¹⁷ See PD at 53.

¹⁸ See, e.g., D.98-12-075, 1998 Cal. PUC LEXIS 1016, *89.

¹⁹ See D.98-12-075, 1998 Cal. PUC LEXIS 1016, *54.

Commission examines in determining whether to grant the local RA waiver, essentially examining whether the LSE made a robust good-faith effort to comply.²⁰

The Commission adopted the local RA waiver on two grounds: to address market power²¹ and to prevent making LSEs that are unable to contract for sufficient local RA to meet their requirement “subject to both backstop procurement costs and potential penalties.”²² Both grounds are applicable in the case of system RA and, more compelling, there is substantial evidence that LSEs may be unable to comply despite reasonable efforts. The Commission should extend the existing local RA waiver mechanism to system RA for Compliance Years 2021 and 2022 and provide greater clarity on what information and data is required from submitting LSEs. The need for the waiver can be revisited as procurement in response to D.19-11-016 begins to come online.

III. THE COMMISSION SHOULD DELAY THE IMPLEMENTATION OF SHAPED SYSTEM PENALTIES UNTIL COMPLIANCE YEAR 2022

The PD proposes to adopt “a shaped system penalty price that is \$8.88/kW-month in summer months (May to October) and \$4.44/kW-month in non-summer months.”²³ The PD reasons that the current \$6.66/kW-month penalty price may not incentivize load-serving entities to meet their requirements in summer months.²⁴ The PD, without explanation, does not address or resolve the legitimate concerns raised by CalCCA. These issues should be addressed prior to the adoption of Energy Division’s proposal. At a minimum, the Commission should modify the PD to defer implementation of shaped penalties until Compliance Year 2022.

In response to the Energy Division’s proposal for shaped penalties, CalCCA pointed out that raising penalties in summer months does not address the foundational problem of a tightening RA market.²⁵ CalCCA argued that “[i]f anything, a higher penalty will likely enable suppliers to exercise even more market power, resulting in harm to ratepayers through both elevated RA prices and elevated penalties.”²⁶ CalCCA concluded:

²⁰ See D.06-06-064 at 73.

²¹ D.06-06-064, Conclusion of Law 27 at 86 (“A waiver process is necessary as a market power mitigation measure, and should therefore be adopted as a component of the Local RAR program.”).

²² *Id.* at 71.

²³ PD, Ordering Paragraph 19 at page 78.

²⁴ PD at 54.

²⁵ *Opening Comments of the California Community Choice Association on Track 2 Proposals*, Mar. 23, 2020 (“CalCCA Comments”) at 18-19.

²⁶ CalCCA Comments at 18.

Even without higher penalties, high prices will continue to serve as a signal to LSEs that new capacity needs to be brought onto the system, and new builds will also continue to be incentivized in the IRP procurement track. However, pending deliveries from new builds, higher penalties will only result in LSEs paying higher prices for the existing capacity that is available today.²⁷

The solution, CalCCA argued, is to adopt a system RA penalty waiver mechanism, similar to the mechanism used for local RA compliance, to avoid penalizing LSEs and their customers despite LSEs' reasonable efforts to comply. In addition, CalCCA proposed penalties that escalate for LSEs who either repeatedly fail to demonstrate their reasonable commercial efforts through the waiver process or who fail even to seek a waiver.²⁸

The PD, while mentioning CalCCA's concerns, does not address or resolve them. It does not conclude that the shaped penalties will not increase the exercise of market power. Nor does it conclude that penalizing LSEs in a tightening market, despite reasonable efforts to comply, is acceptable or a justifiable burden on ratepayers. Instead, it adopts the shaped penalties based only on concern that the current penalty price may not incentivize compliance.²⁹

If the Commission declines to adopt CalCCA's proposals it should, at a minimum, defer implementation of the shaped penalties proposal. The Commission has directed procurement to enhance system RA supply in D.19-11-016, and these resources will begin to come online in 2021 with additional supply available in 2022. To avoid unnecessarily penalizing LSEs and their customers, the Commission should defer implementation of the shaped penalties until Compliance Year 2022. This balanced approach will avoid unproductive penalties and increased rates – a transfer of wealth to from customers to generators - while the new supply is being developed.

IV. THE COMMISSION SHOULD CLARIFY THE TIMING, STANDARDS, AND PROCESS FOR WAIVERS OF “PG&E OTHER” SUBAREA REQUIREMENTS

The PD allows LSEs to sidestep their existing obligations to procure sufficient RA capacity in each of the disaggregated “PG&E Other” local capacity areas (“LCAs”) through a two-step process.³⁰ The LSE must first demonstrate circumstances to comply with the existing

²⁷ *Id.* at 19.

²⁸ *Id.* at 21.

²⁹ PD at 54.

³⁰ PD at 63; *id.*, Ordering Paragraph 21 at pages 78-79.

local RA waiver process. It must then demonstrate in its Year Ahead compliance filing that while it has not met the disaggregated requirement, it has met the requirements of the PG&E Other LCAs in aggregate. The PD's proposal would benefit from several clarifications.

Today, an LSE may seek a waiver of its disaggregated PG&E Other requirements. The only difference between this and the PD's proposal appears to be that even if an LSE does not meet disaggregated requirements, it can demonstrate it has met its aggregate PG&E Other obligation and a waiver would be granted. So, in effect, an LSE must make reasonable efforts to meet subarea requirements but will not be penalized for failing. The Commission should clarify that LSEs may still seek a waiver of one or more of the disaggregated PG&E Other obligations even if they have not been able to meet the aggregate obligation despite commercially reasonable efforts.

The Commission should also clarify the waiver process in three other respects: waiver timing, waiver standards and process, and implementation timing. First, the proposal appears to allow an LSE to submit a single local RA waiver request for PG&E Other subareas at the Year Ahead filing. It is unclear, however, whether LSEs filing Year Ahead waivers under this process would be required to re-file Month Ahead waivers as is required under the current waiver process. CalCCA recommends that if a waiver request is submitted in the Year Ahead compliance filing, an LSE will not be required to re-submit month-ahead waivers for disaggregated PG&E Other requirements. Second, to provide certainty, the Commission should clarify that the same standards and process will be applied to the PG&E Other subarea waiver as are applied to other waiver requests, including those specific requirements in Ordering Paragraph 21. Third, the Commission should clarify that the modified rules will apply commencing in Compliance Year 2021.

V. THE COMMISSION SHOULD CLARIFY IMPLEMENTATION TIMING FOR RA PROGRAM REFORMS

The PD does not specify the implementation timeline for the following key rule changes:

- Modifications to the QC and counting methodologies for hydroelectric and hybrid/co-located resources
- Modifications to the MCC Buckets
- Establishment of a waiver for the Provider of Last Resort
- Effective flexible capacity of storage

Absent any specified implementation date, CalCCA presumes that these measures will all be implemented for Compliance Year 2021. Implementing any of these changes for 2020 would be unreasonable because LSEs would not have had notice of the changes when procuring to meet their 2020 requirements. The Commission should make clear its intent to implement the new rules prospectively, effective for Compliance Year 2021.³¹

VI. CONCLUSION

CalCCA appreciates the opportunity to submit these comments and requests adoption of the recommendations proposed herein. For all the foregoing reasons, the Commission should modify the proposed decision as provided in Appendix A.

Respectfully submitted,



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June 11, 2020

³¹ CalCCA has proposed in its May 14, 2020, Petition for Modification of Decision 19-11-016, application of the new rules for purposes of determining compliance with D.19-11-016.

APPENDIX A

Proposed Changes to Findings of Fact, Conclusions of Law and Ordering Paragraphs

FINDINGS OF FACT

17. Penalty prices set below the RA capacity prices may not incentivize LSEs to meet system requirements in summer months, but capacity constraints will persist until at least 2021, when new resources ordered by D.19-11-016 come online. It is reasonable to shape system penalty prices by summer and non-summer months and to include October as summer month commencing for the 2022 compliance year.

18. A ~~limited~~ system and flexible waiver for the POLR is reasonable, particularly in the face of persistent system RA market constraints.

CONCLUSIONS OF LAW

11. A shaped system RA penalty price by summer and non-summer months should be adopted commencing for 2022 compliance.

12. A ~~limited~~ system and flexible waiver for the POLR should be adopted using the mechanism in place for local RA waivers.

ORDERING PARAGRAPHS

~~20. The provider of last resort (POLR) may be eligible for a limited system or flexible Resource Adequacy (RA) waiver for instances in which retail load is: (a) returned to the POLR with insufficient time to meet the RA requirement, or (b) not transferred from the POLR to another load-serving entity (LSE) as planned as a result of action or inaction by the LSE. The waiver shall be submitted through a Tier 2 Advice Letter.~~