

**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 Reforms and Refinements, and  
Establish Forward Resource Adequacy  
Procurement Obligations.

R.21-10-002

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S COMMENTS ON THE  
PROPOSED DECISION DENYING PETITION FOR MODIFICATION OF DECISION  
22-03-034 BY CALIFORNIA COMMUNITY CHOICE ASSOCIATION**

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## SUMMARY OF RECOMMENDATIONS

CalCCA recommends that the California Public Utilities Commission (Commission) modify the Proposed Decision to grant the Petition for Modification, directing the following actions:

1. Immediately “suspend” a portion of a load-serving entity’s (LSE’s) annual system and flexible RA compliance requirements until after the California Independent System Operator Corporation (CAISO) has performed local resource adequacy (RA) backstop for the Central Procurement Entity (CPE);
2. Immediately “suspend” a portion of an LSE’s January - March monthly system and flexible RA compliance requirements until after the CAISO has performed local RA backstop for the CPE;
3. Assess deficiency penalties for the unsuspended portion of the annual system RA requirement no earlier than January 1, 2023, as Decision 22-03-034 currently provides;
4. Once the CAISO has completed its backstop, but not later than January 15, 2023, update annual system and flexible RA requirements for the remainder of the year, accounting for system and flexible allocations resulting from backstop;
5. Require LSEs then to meet the “suspended” portion of their annual and monthly system RA, as adjusted, not later than May 1, 2023; and
6. Further recognizing that the uncertainty and complexity added by the CPE may leave LSEs unable, despite reasonable efforts, to procure their system and flexible RA requirements, the Commission should adopt – for all investor-owned utility service areas – an interim process for an LSE to seek a waiver of system and flexible RA penalties under these circumstances.

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

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

R.21-10-002

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S COMMENTS ON THE  
PROPOSED DECISION DENYING PETITION FOR MODIFICATION OF DECISION  
22-03-034 BY CALIFORNIA COMMUNITY CHOICE ASSOCIATION**

The California Community Choice Association (CalCCA)<sup>1</sup> submits these comments pursuant to Rule 14.3 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure on the proposed *Decision Denying Petition for Modification of Decision 22-03-034 by California Community Choice Association* (Proposed Decision), dated November 9, 2022.

**I. INTRODUCTION**

CalCCA filed *California Community Choice Association's Emergency Petition for Modification of D.22- 03-034 to Modify Resource Adequacy Procurement Timeline and Adopt Interim System Resource Adequacy Waiver Process*<sup>2</sup>, dated September 30, 2022, that would

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<sup>1</sup> California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Energy For Palmdale's Independent Choice, Lancaster Choice Energy, Marin Clean Energy, Orange County Power Authority, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Santa Barbara Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

<sup>2</sup> *California Community Choice Association's Emergency Petition for Modification of D.22-03-034 to Modify Resource Adequacy Procurement Timeline and Adopt Interim System Resource Adequacy Waiver Process* (R.21-10-002), Sept. 30, 2022 (PfM).

modify the Resource Adequacy (RA) procurement timeline and adopt an interim system RA waiver process. The PfM was driven by the significant uncertainty load-serving entities (LSEs) face when procuring system and flexible RA resulting from Pacific Gas and Electric Company's (PG&E's) Central Procurement Entity (CPE) 2023 procurement shortfalls. This uncertainty is exacerbated by the added complexity inherent in the CPE framework and the opportunities to exercise of market power in the already constrained RA market. CalCCA sought a near-term solution including the following elements:

7. Immediately "suspend" a portion of an LSE's annual system and flexible RA compliance requirements until after the California Independent System Operator Corporation (CAISO) has performed local RA backstop for the CPE;
8. Immediately "suspend" a portion of an LSE's January - March monthly system and flexible RA compliance requirements until after the CAISO has performed local RA backstop for the CPE;
9. Assess deficiency penalties for the unsuspended portion of the annual system RA requirement no earlier than January 1, 2023, as Decision (D.) 22-03-034 currently provides;
10. Once the CAISO has completed its backstop, but not later than January 15, 2023, update annual system and flexible RA requirements for the remainder of the year, accounting for system and flexible allocations resulting from backstop;
11. Require LSEs then to meet the "suspended" portion of their annual and monthly system RA, as adjusted, not later than May 1, 2023; and
12. Further recognizing that the uncertainty and complexity added by the CPE may leave LSEs unable, despite reasonable efforts, to procure their system and flexible RA requirements, the Commission should adopt – for all investor-owned utility service areas – an interim process for an LSE to seek a waiver of system and flexible RA penalties under these circumstances.

The Proposed Decision rejects CalCCA's PfM, indicating that the Commission already addressed the concerns raised in the PfM in D.22-03-034 by indicating that Energy Division will not send deficiency notices to LSEs for year-ahead RA obligations until after January 1, 2023.<sup>3</sup>

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<sup>3</sup> Proposed Decision at 8-10.

For the reasons described herein, CalCCA opposes the Proposed Decision and urges the Commission to adopt the recommendations made in the PfM.

## II. SPECIFICATION OF ERROR

The Proposed Decision errs in rejecting the PfM on grounds that “the concerns raised in the petition with respect to the PG&E CPE’s local RA procurement shortfalls for the 2023 RA year were already addressed in D.22-03-034.”<sup>4</sup> The conditions LSEs faced in making their compliance filings on October 31, 2022, were not known at the time the Commission issued D.22-04-034. At that time, while the Commission knew the CPE had a shortfall of local RA capacity two years ahead it did not know the CPE would *maintain* a significant shortfall in the year-ahead showing, which was made five months after D.22-04-034 was issued. Because LSEs are dependent on allocations from the CPE to assess their system and flexible RA positions, the CPE shortfall LSEs were thus placed in a position of having insufficient time to manage their portfolios, as Energy Division acknowledged.

Likewise, while the Commission knew the RA market was showing signs of scarcity, the evidence of scarcity has only continued to grow as demonstrated in the PfM and PG&E’s response.<sup>5</sup> When LSEs were finally in a position to assess their positions – in September 2022 – the extent of the market scarcity was emerging. The PD ignores these facts, and its rejection of the PfM under existing conditions constitutes an abuse of the Commission’s discretion.

The Proposed Decision further errs in concluding that the petition for modification failed to provide sufficient basis to warrant a modification of D.22-03-034. All of the information

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<sup>4</sup> *Id.* at 8.

<sup>5</sup> PfM at 13; *Response of Pacific Gas and Electric Company (U 39 E) to California Community Choice Association’s Petition for Modification of Decision 22-03-034* (R.21-10-002), Oct. 11, 2022 (PG&E Response), at 10-11.

upon which the PFM was based – the CPE’s shortfall and the constrained RA market – are facts either known by the Commission or drawn from publicly available data.

### **III. THE PROPOSED DECISION ERRS IN CONCLUDING THAT THE CONDITIONS DRIVING THE PFM WERE ADDRESSED IN D.22-03-034**

#### **A. The Commission Did Not Know the CPE Would Remain Deficient When it Issued D.22-03-034**

The original CPE design aimed to give LSEs sufficient notice of their system and flexible requirements following CPE procurement.<sup>6</sup> The CPE design failed, however, resulting in a significant, unanticipated shortfall in the two-year ahead showing.<sup>7</sup> The Commission attempted D.22-03-034 to correct the situation, giving the CPE greater procurement latitude<sup>8</sup> and softening the requirements for self-showing.<sup>9</sup> Despite the Commission’s efforts, however, the shortfall was not resolved as anticipated for the year-ahead showing in September 2022.<sup>10</sup>

The Commission was aware when it issued D.22-03-034 that the PG&E CPE missed its two-year ahead 100 percent showing and Commission gave PG&E LSEs until January 1, 2023, before sending deficiency notices. The Commission assumed that this extension, combined with its anticipation that the CPE would meet its obligation, would provide LSEs with enough time to factor in CPE credits into their procurement of system and flexible RA.

When the CPE came up short in the year-ahead showing, however, the Commission did nothing to reconsider the new circumstances. With deficiency assessments suspended until

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<sup>6</sup> D.19-02-022 Ordering Paragraph (O¶) 11 specifies that the local RA requirement for the Central Procurement entity is 100 percent for years one and two and 50 percent for year three. Further, O¶ 13 specifies that the Local RA showing will be due October 31. In this case, the amount of procurement by the CPE for 2023 should have been known in November 2021.

<sup>7</sup> PG&E Advice Letter 6386-E-A revealed a deficiency between 4,264.13 MWs and 6,049.45 MWs for the 2023 RA Compliance Year.

<sup>8</sup> D.22-03-034 at 74 (“The CPE is authorized to use broker markets or bilateral transactions to fill short positions for any deficiencies in the applicable three-year forward period.”).

<sup>9</sup> *Id.* at 13-14.

<sup>10</sup> D.22-03-034, *Decision on Phase I of The Implementation Track: Modifications to the Central Procurement Entity Structure* (R.21-10-002), Mar. 17, 2022, O¶ 13.



January 1, 2023, LSEs have *just four months* (September through December) to procure system RA after the CPE completes its local RA procurement. The uncertainty introduced by this compressed timeline is compounded by the fact that in its September 2022 report, the PG&E CPE reported that it was unable to meet its 2023 local RA requirements in every month with shortfalls ranging from 1,050 megawatts (MW) to 4,485 MW.<sup>11</sup> The Proposed Decision ignores the fact that the compressed timeline coupled with the significant CPE procurement shortfall has interfered with LSEs' ability to plan their own system and flexible RA procurement.

**B. The Commission Did Not Base D.22-03-034 On Market Scarcity**

The Proposed Decision errs in concluding that the extreme nature of RA market scarcity was known when it issued D.22-03-034. The Commission concluded in that decision that the CPE's shortfall was driven, in part, by the self-showing requirements and that broadening the types of transactions the CPE could use would address the shortfall.<sup>12</sup> General market scarcity is not discussed in the D.22-03-034.

CalCCA's analysis of RA market conditions presented in the PFM provides evidence of a projected system RA shortfall for 2023, with source data supported by public document citations.<sup>13</sup> PG&E's response to the PFM, while differing marginally in outcome due to a much more optimistic view of new project online dates, affirmed the extremely tight market conditions LSEs face.<sup>14</sup> Moreover, the scarcity shown in these analyses neither account for the possibility of capacity associated with RA resources being procured by a non-jurisdictional LSE or exported out of state. Without a heroic amount of incremental import RA or good fortune in accelerating

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<sup>11</sup> AL 6706-E, Pacific Gas and Electric Company (PG&E) Central Procurement Entity ("CPE") Annual Compliance Report 2022 Annual Compliance Report (Sept. 19, 2022) at Attachment A – PG&E CPE Aggregate Procurement Summary (2022 PG&E CPE Compliance Report).

<sup>12</sup> D.22-03-034 at 13-14 and 74.

<sup>13</sup> PFM at 13.

<sup>14</sup> PG&E Response at 10-11.

online dates for projects under development and construction, some LSEs are guaranteed to not meet their system RA requirements simply because the RA supply is insufficient.

#### **IV. THE PROPOSED DECISION ERRS IN CONCLUDING THAT THE PFM DOES NOT PROVIDE A SUFFICIENT BASIS TO WARRANT MODIFICATION**

The Proposed Decision finds that, under Rule 16.4(b), the PFM does not provide evidence sufficient to warrant its adoption. To the contrary, the key facts upon which the PFM is based are drawn from publicly available materials.

Rule 16.4(b) requires, as the Proposed Decision observes, any factual allegations must be supported with specific citations to the record or to matters that may be officially noticed. While Rule 16.4(b) also requires allegations of changed facts to be supported by declaration or affidavit, the facts underlying the PFM are evident in the Commission's own website, its prior decision, and publications of the Energy Commission or California Independent System Operator.

- The PFM cites materials on the Commission's website to demonstrate that the CPE did not meet its two-year ahead or year-ahead local RA obligations.<sup>15</sup>
- D.22-03-034 evidences the Commission's awareness that the timeline for CPE planning affects LSE procurement planning.<sup>16</sup>
- The PFM details the sources of all public data that is subject to Commission notice to demonstrate the current capacity shortfall.<sup>17</sup>

The Commission is fully aware of the conditions that led to the PFM errs in rejecting the PFM for failure to provide an affidavit where publicly available information is sufficient.

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<sup>15</sup> See PFM, notes 26-28.

<sup>16</sup> D.22-03-034 at 33, 58.

<sup>17</sup> See *id.* at 11.

**V. THE COMMISSION SHOULD GRANT THE PFM IN RECOGNITION OF CHANGES IN MARKET CONDITIONS SINCE THE ISSUANCE OF D.22-03-034**

Imposing penalties on LSEs and their customers for deficiencies under the conditions discussed in Section III will only increase customers' costs with no hope of increasing resource availability. In contrast, adopting a framework in which the Commission can *consider* whether an LSE used its best efforts to procure its RA requirements will avoid imposing unnecessary costs on customers without reducing incentives for an LSE to procure its RA requirement. For these and other reasons advanced in the Pfm, the Commission should grant the Pfm.

**VI. CONCLUSION**

CalCCA appreciates the opportunity to submit these comments and requests the Proposed Decision be modified to modify the system RA procurement timeline and adopt an interim RA penalty waiver process as requested in the Pfm.

Respectfully submitted,



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CALIFORNIA COMMUNITY CHOICE  
ASSOCIATION

November 29, 2022

## ATTACHMENT A

### PROPOSED CHANGES TO FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS

#### FINDINGS OF FACT

1. Rule 16.4(b) requires that any allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

#### New Findings of Fact:

1. The PG&E CPE failed to meet its local RA requirements in both its two-year-ahead and year-ahead showing.
2. The PG&E CPE's failure to meet its local RA requirements two years in a row created uncertainty for LSEs in procuring their system and flexible RA requirements.
3. The RA capacity market is extremely tight, leaving a strong possibility that there may not be sufficient capacity for all LSEs to meet their compliance requirements.
4. Under current conditions, penalizing LSEs that demonstrate best efforts to procure their system and flexible RA requirements would serve no near-term purpose and would only place upward pressure on customer rates.
5. Creating a framework that permits system and flexible RA waivers when an LSE uses best efforts to procure its requirements will not create a disincentive to adding new resources to the grid.

#### CONCLUSIONS OF LAW

1. ~~The petition for modification failed to satisfy the requirements of Rule 16.4(b).~~
2. The petition for modification ~~failed to provide~~ provided a sufficient basis to warrant a modification of D.22-03-034.
3. The petition should be ~~denied~~ granted.

#### ORDERING PARAGRAPHS

1. California Community Choice Association's petition for modification of Decision 22-03-034 is ~~denied~~ granted.
2. Energy Division shall develop a protocol for submission and review of penalty waiver requests.