



FILED
10/30/19
04:59 PM

**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

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

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October 30, 2019

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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 horizontal line underneath it.

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.