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

ENERGY DIVISION

AGENDA ID: 19686  
RESOLUTION E-5157  
August 19, 2021

**RESOLUTION**

Resolution E-5157. Partially grants Pilot Power Group, Inc. (Pilot)'s Letter for Reconsideration of Energy Division's Denial of Their Request to Waive Procurement Obligations Related to its 2020 Year Ahead Local Resource Adequacy Deficiencies and to Waive its Remaining 2020 Year Ahead Local Resource Adequacy Obligations.

PROPOSED OUTCOME:

This Resolution modifies Energy Division's Disposition to deny Pilot's request and partially grants waiver for Pilot from:

- (1) 2020 year ahead local Resource Adequacy deficiencies for compliance year 2021 and 2022; and
- (2) remaining 2020 year ahead local Resource Adequacy obligations for compliance year 2021 and 2022.

SAFETY CONSIDERATIONS:

There is no anticipated impact on safety.

ESTIMATED COST:

Penalties associated with procurement obligations will not be remitted to the State's General Fund for the portion of the obligations for which a waiver is granted.

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## **SUMMARY**

On October 31, 2019, Pilot filed a waiver request via Advice Letter (AL) 52-E for its 2020 year-ahead local Resource Adequacy (RA) requirement in one of the disaggregated PG&E Other local areas in compliance year 2020, 2021, and 2022.<sup>1</sup> On December 6, 2019, Pilot filed a supplemental AL 52-E-A to amend the local waiver AL 52-E pursuant to Energy Division's deficiency notice. In AL 52-E-A, Pilot seeks waiver of an additional local area requirement in 2020. On June 1, 2020, Energy Division issued a disposition letter, denying Pilot's waiver request, stating that Pilot did not demonstrate that it pursued all commercially reasonable efforts in procuring local capacity to meet its local RA obligations.

On June 17, 2020, Pilot submitted a letter requesting that the CPUC reconsider Energy Division's denial of Pilot's local waiver request contained in AL 52-E and 52-E-A.<sup>2</sup> Pilot stated that the relief should be granted based on its efforts to: procure through soliciting numerous counterparties, participated in multiple solicitations issued by various counterparties.<sup>3</sup> Pilot also seeks relief from its remaining 2020 year-ahead local RA obligation. Pilot is potentially subject to enforcement proceedings and/or penalties if a waiver is not granted for its procurement deficiencies.

We partially grant Pilot's 2020 year-ahead local waiver Advice Letter 52-E and 52-E-A based on our review of the waiver criteria contained in Section 3.3.12 of D.06-06-064 and other circumstances. As explained, below: Pilot's local waiver for compliance year 2021 and 2022 is granted; and Pilot's local waiver request for compliance year 2020 is denied.

## **BACKGROUND**

Public Utilities Code section 380 requires the Commission, in consultation with the Independent System Operator, to establish resource adequacy requirements for all load-serving entities (LSEs). Decision (D.)05-10-042 established a year-ahead and month-ahead *system* resource adequacy requirement under the

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<sup>1</sup> Other PG&E Areas is an aggregation of six local areas in PG&E's Transmission Access Charge (TAC) area. They are Fresno, Kern, Sierra, Stockton, Humboldt, and North Coast/North Bay.

<sup>2</sup> Letter for Reconsideration of Energy Division Denial of Pilot Power Group Advice Letter 52-E and 52-E-A (2020 Year Ahead Local Waiver Request), at p. 1

<sup>3</sup> Ibid. at p. 3

jurisdiction of the Commission. D.06-06-064 expanded the RA program to include a year-ahead *local* resource adequacy requirement.

D.06-06-064 's local RA requirements are based on the California Independent System Operator (CAISO)'s Local Capacity Study, which establishes RA requirements in transmission-constrained local areas. The five local areas are San Diego-IV, LA Basin, Big Creek-Ventura, Bay Area, and Other PG&E Areas. D.06-06-064 also adopted the local waiver process because the Commission found that a waiver process would be necessary to mitigate against market power in potentially constrained local areas. Further, Commission staff was delegated authority to approve local waiver requests according to criteria contained in D.06-06-064.<sup>4</sup>

Section 3.3.12 of D.06-06-064 established requirements that LSEs must meet to be eligible for a waiver from its Local Capacity Requirement (LCR) obligations:

*(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*

*(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.*

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<sup>4</sup> The Commission has not granted staff authority to grant waivers for system and flexible deficiencies.

*An LSE's waiver request that meets these requirements is a necessary but not a sufficient condition for the grant of such waiver. The Commission will also consider other information brought to its attention regarding the reasonableness of the waiver request.<sup>5</sup>*

D.13-06-024 and D.14-06-050 adopted an interim *flexible* RA framework and flexible RA requirements for 2015-2017; these requirements remain in place until a permanent flexible product is developed. Both local and flexible capacity are subsets of the system requirement, meaning that some portion of LSEs overall system requirement must be procured in local areas and some portion must have specified flexible attributes.

D.19-02-022 established multi-year local RA requirements for a three-year duration to begin in 2020. To comply with 2020 year-ahead RA requirements, LSEs must procure: 100 percent of their local RA requirements for compliance year 2020 and compliance year 2021, and 50 percent of their local RA requirements for compliance year 2022.<sup>6</sup>

In D.19-06-026, the Commission updated the local trigger price from \$40/kW-year to \$51/kW-year. D.19-02-022 disaggregated the Other PG&E local area into the six smaller local areas, namely Fresno, Sierra, Kern, Stockton, Humboldt, and North Coast/North Bay (NCNB).

D.19-06-026 established 2020 compliance year RA obligations for all LSEs. On October 31, 2019, twenty (20) LSEs, out of a total of thirty-nine (39) Commission-jurisdictional LSEs, submitted local waiver requests due to their inability to procure sufficient capacity in one or more local areas to meet their 2020 year-ahead local RA requirements.

For the 2020 year-ahead RA compliance process, the individual local deficiencies occurred mainly in the six disaggregated Other PG&E local areas. CAISO's local

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<sup>5</sup> D.06-06-064, pp.72-73.

<sup>6</sup> LSEs must also procure 90 percent of their system requirements for the summer months from May to September; and 90 percent of their flexible requirements for all twelve months. In the month-ahead compliance process, LSEs are required to meet 100 percent of their local, system, and flexible RA obligations.

residual analysis determined that there were individual and collective deficiencies in the PG&E TAC area. The deficiencies were in the Other PG&E local areas, specifically Sierra, Stockton, Fresno, and Kern.<sup>7</sup> However, CAISO did not issue a Capacity Procurement Mechanism (CPM) designation, which is a backstop procurement mechanism. Nevertheless, Commission decisions require that the LSEs procure capacity to meet their RA obligations and may impose penalties for failure to do so.<sup>8</sup>

## **DISCUSSION**

A resolution is required to resolve Pilot's letter for reconsideration of Energy Division's disposition of Advice Letter 52-E and 52-E-A.

The Commission has reviewed Pilot's local waiver request based on the standards outlined in section 3.3.12 of D.06-06-064. The Commission also reviewed Pilot's letter for reconsideration to Energy Division. In the letter, Pilot states that it contacted and solicited numerous counterparties, participated in multiple solicitations issued by various counterparties, and there is insufficient capacity available in one of the deficient local areas.<sup>9</sup>

Energy Division denied Pilot's local waiver request because Pilot did not issue a solicitation via a Request for Offer (RFO). Pilot submitted a letter for reconsideration to Energy Division's disposition, and the Commission has discretion to uphold or reverse Energy Division's rejection of the waiver request. We find that Energy Division applied the appropriate criteria in rejecting Pilot's Advice Letter based on standards outline in D.06-06-064. However, we find that the following considerations merit the granting of a waiver under these specific circumstances.

The 2020 year-head RA process is the first year that the Commission imposed multi-year local RA requirement and disaggregated the Other PG&E local areas.

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<sup>7</sup> Evaluation Report of Load Serving Entities' Compliance with 2020 Local and System Resource Adequacy Requirements, November 12, 2019, Available at: [EvaluationReport\\_LoadServingEntitiesCompliance\\_2020Local\\_SystemResourceAdequacyRequirements.pdf \(caiso.com\)](#)

<sup>8</sup> Resolution E-4017, as modified by E-4195, D.10-06-036, and D.11-06-022.

<sup>9</sup> Letter for Reconsideration of Denial of Pilot Power Group Advice Letter 52-E and 52-E-A (2020 Year Ahead Local Waiver Request), at pp. 3, 4-6

These changes made it more difficult for LSEs to meet their procurement obligations. The purpose of our RA enforcement regimen is to bring LSEs into compliance so that there is enough generation under contract to meet California's electricity demand. We are granting reconsideration and waiving remaining local procurement obligations from the 2020 year-ahead RA requirements for compliance year 2021 and 2022 because: 2020 is the first year we expanded the local RA program to three years forward. But even under the previous rules prior to 2020, Pilot would not have met the criteria for a waiver of their 2020 local RA deficiency because they did not hold an RFO. D.06-06-064 states that the standard for granting a local waiver is that the LSE "has made every commercially reasonable effort to contract for local RAR resources."<sup>10</sup> Pilot did not make every commercially reasonable effort by not holding an RFO, therefore, does not meet the standards for granting their local waiver. Pilot has subsequently filed a local waiver request via AL 59-E for the 2021 year-ahead RA compliance process and has held RFOs for its compliance year 2021 and 2022 local RA procurement, which complied with the waiver criteria contained in D.06-06-064; their waiver request was granted by Energy Division.

Thus, the Commission modifies Energy Division's denial of Pilot's 2020 year-ahead local waiver request contained in Advice Letter 52-E and 52-E-A and partially grants Pilot's local waiver request. Pilot's local waiver request for compliance year 2021 and 2022 is granted. Pilot's local waiver request for compliance year 2020 is denied.

### **COMMENTS**

Public Utilities Code section 311(g)(1) provides that this Resolution must be served on all parties and subject to at least 30 days public review. Section 311(g)(2) provides that this 30-day review period and 20-day comment period may be reduced or waived upon the stipulation of all parties in the proceeding. The 30-day review and 20-day comment period for the draft of this Resolution was neither waived nor reduced. Accordingly, the draft Resolution was mailed to parties for comments on <Month> <Day>, 2021.

### **FINDINGS**

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<sup>10</sup> D.06-06-064, p. 71.

1. Pilot filed a local waiver request for their 2020 year-ahead RA compliance via Advice Letter 52-E and 52-E-A.
2. Energy Division denied Pilot's 2020 year-ahead local waiver request contained in Advice Letter 52-E and 52-E-A on June 1, 2020.
3. Pilot submitted a letter for reconsideration to Energy Division on June 17, 2020.
4. The 2020 year-ahead RA compliance process is the first time that the Commission imposed multi-year local RA requirement and disaggregated procurement requirements in Other PG&E local areas.
5. In the 2021 year-ahead RA compliance process, Pilot's local waiver request contained in AL 59-E was granted. Pilot issued RFOs for 2021 and 2022 RA compliance year procurement.
6. It is reasonable to grant Pilot's 2020 year ahead local waiver request for compliance year 2021 and 2022.
7. Pilot did not issue an RFO for its 2020 RA procurement.
8. It was not commercially reasonable for Pilot to fail to hold an RFO.
9. It is reasonable to deny Pilot's 2020 year ahead local waiver request for compliance year 2020.

**THEREFORE IT IS ORDERED THAT:**

1. Pilot Power Group, Inc. (Pilot)'s 2020 year-ahead local waiver request via Advice Letter 52-E and 52-E-A is partially granted.
2. Pilot will not be responsible for any remaining 2020 year-ahead local Resource Adequacy obligations for compliance year 2021 and 2022.

3. Pilot is responsible for any remaining 2020 year-ahead local Resource Adequacy obligations for compliance year 2020 and may be subject to enforcement action and/or penalties for these deficiencies.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on August 19, 2021; the following Commissioners voting favorably thereon:

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RACHEL PETERSON  
Executive Director