ADVICE LETTER (AL) SUSPENSION NOTICE
ENERGY DIVISION

Utility Name: East Bay Community Energy	Date Utility Notified: 6/9/2022
Utility Number/Type: 201	[X] E-Mailed to: mbrandt@ebce.org
Advice Letter Number(s): 34-E	ED Staff Contact: Emma Ng
Date AL(s) Filed: 1/18/2022	ED Staff Email: emma.ng@cpuc.ca.gov
Utility Contact Person: Melissa Brandt	ED Staff Phone No.: 415-703-3175
Utility Phone No.: 510-570-5110	

☐ **INITIAL SUSPENSION (up to 120 DAYS from the expiration of the initial review period)**

This is to notify that the above-indicated AL is suspended for up to 120 days beginning **February 17, 2022** (30 days after the Advice Letter is filed) for the following reason(s) below. If the AL requires a Commission resolution and the Commission's deliberation on the resolution prepared by Energy Division extends beyond the expiration of the initial suspension period, the advice letter will be automatically suspended for up to 180 days beyond the initial suspension period.

☐A Commission Resolution is Required to Dispose of the Advice Letter

☐ Advice Letter Requests a Commission Order

☐ Advice Letter Requires Staff Review

The expected duration of initial suspension period is 120 days

☒ **FURTHER SUSPENSION (up to 180 DAYS beyond initial suspension period)**

The AL requires a Commission resolution and the Commission's deliberation on the resolution prepared by Energy Division has extended beyond the expiration of the initial suspension period. The advice letter is suspended for up to 180 days beyond the initial suspension period.

If you have any questions regarding this matter, please contact Emma Ng at emma.ng@cpuc.ca.gov.

cc:
EDTariffUnit
Simone Brant (supervisor of analyst)

* Note: reference – Decision D.02-02-049, dated February 21, 2002, and Rule 7.5 in appendix A of D.O7-01-024

ADVICE LETTER (AL) SUSPENSION NOTICE
ENERGY DIVISION

Utility Name: East Bay Community Energy	Date Utility Notified: 2/11/2022
Utility Number/Type: 201	[X] E-Mailed to: mbrandt@ebce.org
Advice Letter Number(s): 34-E	ED Staff Contact: Emma Ng
Date AL(s) Filed: 1/18/2022	ED Staff Email: emma.ng@cpuc.ca.gov
Utility Contact Person: Melissa Brandt	ED Staff Phone No.: 415-703-3175
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If you have any questions regarding this matter, please contact Emma Ng at emma.ng@cpuc.ca.gov.

cc:
EDTariffUnit
Michele Kito (supervisor of analyst)

* Note: reference – Decision D.02-02-049, dated February 21, 2002, and Rule 7.5 in appendix A of D.O7-01-024



California Public Utilities Commission

ADVICE LETTER SUMMARY

ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No.: East Bay Community Energy ID 201

Utility type:
- [x] ELC
- [ ] GAS
- [ ] WATER
- [ ] PLC
- [ ] HEAT

Contact Person: Melissa Brandt
Phone #: 510-570-5110
E-mail: mbrandt@ebce.org
E-mail Disposition Notice to: mbrandt@ebce.org

EXPLANATION OF UTILITY TYPE
ELC = Electric GAS = Gas WATER = Water
PLC = Pipeline HEAT = Heat

(Date Submitted / Received Stamp by CPUC)

Advice Letter (AL) #: 34-E

Tier Designation: 2

Subject of AL: East Bay Community Energy's Request for Waiver from Part of Its March 2022 Month-Ahead Local Resource Adequacy Requirements

Keywords (choose from CPUC listing):

AL Type: [ ] Monthly [ ] Quarterly [ ] Annual [x] One-Time [ ] Other:

If AL submitted in compliance with a Commission order, indicate relevant Decision/Resolution #:
D. 06-06-064, 07-06-029, 19-02-022

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL:

Summarize differences between the AL and the prior withdrawn or rejected AL:

Confidential treatment requested? [x] Yes [ ] No

If yes, specification of confidential information: Attachment 1 and Exhibits 1- 5 and Attachment 2
Confidential information will be made available to appropriate parties who execute a nondisclosure agreement. Name and contact information to request nondisclosure agreement/ access to confidential information:

Resolution required? [ ] Yes [x] No

Requested effective date: 2/17/22

No. of tariff sheets: n/a

Estimated system annual revenue effect (%):

Estimated system average rate effect (%):

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected:

Service affected and changes proposed[1]:

Pending advice letters that revise the same tariff sheets:

PUBLIC VERSION

[1]Discuss in AL if more space is needed.

Clear Form

Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this submittal, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102
Email: EDTariffUnit@cpuc.ca.gov

Name: Melissa Brandt
Title: Senior Director of Public Policy and Deputy General Counsel
Utility Name: East Bay Community Energy
Address: 1999 Harrison Street, Suite 800
City: Oakland
State: California Zip: 94612
Telephone (xxx) xxx-xxxx: 510-570-5110
Facsimile (xxx) xxx-xxxx:
Email: mbrandt@ebce.org

Name:
Title:
Utility Name:
Address:
City:
State: District of Columbia Zip:
Telephone (xxx) xxx-xxxx:
Facsimile (xxx) xxx-xxxx:
Email:

Clear Form

January 18, 2022

Advice Letter No 34-E
(East Bay Community Energy ID 201)

California Public Utilities Commission
Energy Division
Attention: Resource Adequacy and Procurement Oversight Section
505 Van Ness Avenue, 4th Floor
San Francisco, CA 94102-3298

Re: East Bay Community Energy's Request for Waiver from Part of Its March 2022 Month-Ahead Local Resource Adequacy Requirements

Purpose

Pursuant to the California Public Utilities Commission's ("Commission" or "CPUC") Decision ("D.") 06-06-064, 07-06-029, 19-02-022 and Section 25 of the Commission's *2022 Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings* ("2022 Final RA Guide"), East Bay Community Energy ("EBCE") submits this **Tier 2 Advice Letter** filing requesting that Energy Division grant a waiver to EBCE for a portion of its March 2022 Local Resource Adequacy ("RA") procurement obligations, and assess no Commission-imposed penalties on EBCE related to its shortfall in procurement of its March 2022 Local Resource Adequacy Requirements ("RAR").

Background

As detailed below, EBCE has reasonably and in good faith solicited bids and has actively pursued all commercially reasonable efforts to acquire resources necessary to meet its March 2022 Local RA obligations. However, EBCE has been unable to procure sufficient Local RA capacity in certain Local Areas described herein. As directed by the Commission, EBCE submits this Local RAR Waiver Request ("RA Waiver Request") via Tier 2 advice letter concurrently with EBCE's March 2022 Month-Ahead System, Local and Flexible RAR compliance filing.[1]

The basis for EBCE's RA Waiver Request is set forth in and supported by the attached declaration of Marie Fontenot, EBCE's Senior Director of Power Resources,[2] as well as the attached declaration of Matthew Sasaki, Manager of Operations of the Alliance for

[1] *See* D.06-06-064; *see also* 2022 Final RA Guide at Section 25.
[2] Declaration of Marie Fontenot in Support of EBCE's Request for Waiver from a Portion of EBCE's March 2022 Local Resource Adequacy Procurement Obligation ("Fontenot Declaration"). The Fontenot Declaration is attached to this RA Waiver Request as Attachment 1.

Cooperative Energy Services Power Marketing LLC ("ACES").[3] Given the extensive market-sensitive information contained in the Fontenot Declaration and Sasaki Declaration, EBCE requests it be treated as **CONFIDENTIAL** pursuant to state law and the CPUC decisions further described below.

Legal Standard

Pursuant to D.06-06-064, D.19-02-022, D.20-06-031, and as further described in Section 25 of the 2022 Final RA Guide, the Commission directed that a request for a waiver from Local RA procurement obligations must include both of the following:

(1) a demonstration that the load-serving entity ("LSE") reasonably and in good faith solicited bids for its RAR capacity needs along with accompanying information about the terms and conditions of its 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,

   b. received no bids for an unbundled RA capacity contract of under $51 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.[4]

The Commission has explained that "administration of the ministerial aspects" of the waiver request process "may be delegated to [Energy Division] staff."[5] The example the Commission provided in D.06-06-064 of a question appropriate for staff delegation was "whether an LSE received any bids" in response to a solicitation, because such a determination is based on "an objective standard."[6]

Request for Waiver

EBCE has satisfied the Commission's standard for the granting of a Local RAR waiver by making all commercially reasonable efforts to acquire the Local Areas for which it is deficient for

[3] Declaration of Matthew Sasaki in Support of EBCE's Request for Waiver from its March 2022 Month-Ahead Local Resource Adequacy Procurement Obligations and Confidentiality Claim ("Sasaki Declaration"). The Sasaki Declaration is attached hereto as Attachment 2.
[4] *See* D.06-06-064, mimeo at 73; *see also* D.07-06-029, D.19-02-022, D.20-06-031, and RA Filing Guide, at 41-42.
[5] *Id*.
[6] *Id.*

March 2022. Because EBCE did not receive sufficient bids of Local RA to meet its March 2022 Local RAR, Energy Division has the discretion to grant this waiver request on an objective basis pursuant to the standard in D.06-06-064, D.19-06-026 and the 2022 Final RA Guide.

A. EBCE Reasonably and in Good Faith Solicited Bids for March 2022 Local RA in the PG&E Local Areas

EBCE has been actively procuring local RA to satisfy its 2022 local obligations throughout 2019, 2020, 2021 and 2022. As described and documented in EBCE's 2021-2022 Year-Ahead RA Waiver Request,[7] 2022 Year-Ahead RA Waiver Request[8], and subsequent Month-Ahead RA Waiver Requests,[9] EBCE began its efforts to procure local RA to satisfy its 2022 local obligations in 2019 and continued those efforts through mid-December 2021. For the sake of brevity, EBCE will not re-state those prior procurement efforts in this filing. This letter focuses on EBCE's additional procurement efforts from mid-December 2021 to mid-January 2022, as further detailed in the attached Fontenot Declaration and Sasaki Declaration.

As part of its continued effort to discover available RA capacity to procure, EBCE maintains a consulting agreement with ACES.[10] ACES issued a formal solicitation on behalf of EBCE, Monterey Bay Community Power, Peninsula Clean Energy, San Jose Clean Energy, and Silicon Valley Clean Energy, collectively referred to as the "Joint CCAs," on January 6, 2022.[11] ACES also conducted informal bilateral solicitations for RA on behalf of the CCAs by means of phone, ICE Chat, email, and brokers.[12]
In addition, EBCE regularly engages in discussions with private RA brokers in its efforts to secure additional Local RA to meet its February 2022 RAR. However, EBCE has been unable to secure sufficient additional Local RA capacity to meet all of its Local RAR for February 2022.[13]

Given the extensive and exhaustive efforts that EBCE has engaged in to procure Local RA, EBCE does not believe that there is any March 2022 Local RA currently for sale in the volumes and months that EBCE continues to require.

B. Energy Division Should Grant EBCE's Local RAR Waiver Request and Assess No Penalties Related to EBCE's Local RA Procurement Showing

EBCE has met the Commission's two-part legal standard for waiver of Local RA procurement

[7] East Bay Community Energy's Request for Waiver from 2021 Local Resource Adequacy Requirements; Request for Confidential Treatment (Advice Letter No. 15-E) as submitted to the Commission on October 31, 2020.
[8] East Bay Community Energy's Request for Waiver from Part of Its 2022 Local Resource Adequacy Requirements; Request for Confidential Treatment (Advice Letter No 29-E) as submitted to the Commission on November 1, 2021.
[9] *See* EBCE Advice Letters 31-E and 32-E.
[10] Sasaki Declaration at ¶ A.1.
[11] *Id.* at ¶ B.4.
[12] *Id.* at ¶ B.5.
[13] Fontenot Declaration at ¶ 13.

obligations because it has demonstrated: (1) that it reasonably and in good faith solicited bids for its March 2022 RAR capacity needs for the PG&E Local Areas, and (2) that it did not receive sufficient bids to meet its Local RAR in response to its comprehensive solicitation efforts.

Energy Division has previously used its delegated authority to grant such waiver requests for other entities. For example, in 2008, Energy Division granted San Diego Gas & Electric Company's ("SDG&E") request for waiver under D.06-06-064 in a situation where SDG&E solicited bids for capacity to meet its Local RA procurement obligations but "did not receive sufficient bids" to meet its requirements in the San Diego Local Area. Energy Division found SDG&E's action of soliciting capacity bids through a public RFO "reasonable considering the capacity available to meet SDG&E's [Local RA] obligation." Energy Division stated that it "[did] not believe that efforts beyond the issued RFO would have resulted in additional capacity procured." Applying the same waiver standard in 2017, Energy Division granted waiver requests from Calpine Energy Solutions, LLC and Calpine PowerAmerica-CA, LLC for their San Diego Local Area RA showings for the 2018 compliance year.

Energy Division should similarly find EBCE's solicitation efforts "reasonable" and that further efforts would not have enabled it to procure additional Local RA capacity.

Request For Confidential Treatment

Pursuant to the May 18, 2018 *Administrative Law Judge's Ruling Granting the California Community Choice Association's Request to Submit Information Under Seal* (R.17-09- 020), D.06-06-066, as modified by D.08-04-023, D.16-08-024, D.17-09-023, D.20-07-035 (collectively "Confidentiality Decisions"), and Section 12 of the 2022 Final RA Guide, CCAs are authorized to submit RAR information under seal. Pursuant to D.08-04-023, an LSE need not seek confidential treatment every time it makes a compliance filing of a repetitive nature.[14] Rather, on making subsequent compliance filings, the LSE may cite the earlier declaration for confidentiality.

As detailed in the Declaration of Nick Chaset in Support of the Confidential Treatment of Data Submitted as Part of EBCE's 2021 Year Ahead System, Local, and Flexible RA Requirements Compliance Filing,[15] the Fontenot Declaration (and exhibits) and Sasaki Declaration supporting EBCE's Request for Waiver include extensive amounts of market-sensitive information regarding the current market position and compliance obligations of EBCE, including, without limitation, procurement obligation quantities, procured quantities, entities with whom EBCE has negotiated and transacted, and price-related information that are all market sensitive

[14] D.08-04-023, Section 4.2.6. See also

[15] Declaration of Nick Chaset in Support of the Confidential Treatment of Data Submitted as Part of EBCE's 2021 Year Ahead System, Local, and Flexible RA Requirements Compliance Filing ("Chaset Declaration"). The Chaset Declaration is attached as Attachment 3 of EBCE's Request for Waiver from Part of Its 2022 Local Resource Adequacy Requirements; Request for Confidential Treatment (Advice Letter No. 29-E) submitted on November 1, 2021.

information under section 454.5(g) of the California Public Utilities Code and other state laws.

Accordingly, EBCE requests that the updated Fontenot Declaration (and its exhibits) and Sasaki Declaration included as part of this RA Waiver Request be treated as confidential pursuant to the previously-filed Chaset Declaration.

Protests

Anyone wishing to protest this filing may do so by filing a protest with the CPUC and EBCE by February 7, 2022, which is 20 days after the date of this submittal. Protests should be mailed to the following address:

CPUC Energy Division
ED Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102
Fax: (415) 703-2200
Email: EDTariffUnit@cpuc.ca.gov

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address show above.

The protest also should be sent via U.S. mail (and by facsimile and electronically, if possible) to EBCE at the address shown below on the same date it is mailed or delivered to the Commission:

Melissa Brandt
Senior Director of Public Policy and Deputy General Counsel
East Bay Community Energy
1999 Harrison St, Ste 800
Oakland, CA 94612
510-570-5110
mbrandt@ebce.org

Effective Date

EBCE requests that this Tier 2 advice letter become effective on February 17, 2022, which is 30 days after the date of submittal.

Notice

Pursuant to Section 25 of the 2022 Final RA Guide, a copy of this advice letter is being sent electronically to all parties on the service list for the CPUC's Resource Adequacy proceeding, R.19-11-009.

Tier Designation

Pursuant to Section 25 of the 2022 Final RA Guide, EBCE designates this as a Tier 2 advice letter filing.

Conclusion

For the reasons stated above, EBCE respectfully requests that Energy Division grant EBCE's RA Waiver Request in full and thereby relieve EBCE of any Commission-imposed penalties. In addition, EBCE request confidential treatment for the Fontenot Declaration and exhibits included as part of this filing.

Respectfully submitted this 18th day of January, 2022, at Oakland, California.



_____

Nick Chaset, Chief Executive Officer
East Bay Community Energy
1999 Harrison Street, Suite 800
Oakland, CA 94612

Enclosures: Attachment 1 – **Confidential** Marie Fontenot Declaration (w/exhibits)
Attachment 2 – **Confidential** Matthew Sasaki Declaration

cc: R.19-11-009 Service List
RAFiling@cpuc.ca.gov

ATTACHMENT 1

DECLARATION OF MARIE FONTENOT IN SUPPORT OF EAST BAY COMMUNITY ENERGY'S REQUEST FOR WAIVER FROM PART OF ITS MARCH 2022 MONTH-AHEAD LOCAL RESOURCE ADEQUACY REQUIREMENTS

(ENTIRE ATTACHMENT 1 IS CONFIDENTIAL)

ATTACHMENT 2

REDACTED CONFIDENTIAL MATERIALS

DECLARATION OF MATTHEW SASAKI IN SUPPORT OF EAST BAY COMMUNITY ENERGY REQUEST FOR WAIVER FROM ITS MARCH 2022 MONTH-AHEAD LOCAL RESOURCE ADEQUACY PROCUREMENT OBLIGATIONS AND CONFIDENTIALITY CLAIM

(ENTIRE ATTACHMENT 2 IS CONFIDENTIAL)

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.	Rulemaking 19-11-009 (Filed November 7, 2019)

CERTIFICATE OF SERVICE

I, Judy Pau, certify:

I am employed in the City and County of San Francisco, California, am over eighteen years of age and am not a party to the within entitled cause. My business address is 505 Montgomery Street, Suite 800, San Francisco, California 94111.

On January 18, 2022, I caused the following to be served:

PUBLIC VERSION OF ADVICE LETTER NO. 34-E EAST BAY COMMUNITY ENERGY'S REQUEST FOR WAIVER FROM PART OF ITS MARCH2022 MONTH-AHEAD LOCAL RESOURCE ADEQUACY REQUIREMENTS; REQUEST FOR CONFIDENTIAL TREATMENT

via electronic mail to all parties on the service list R.19-11-009 who have provided the Commission with an electronic mail address.

Executed on January 18, 2022 in San Francisco, California.

/s/Judy Pau
Judy Pau

VIA EMAIL

edtariffunit@cpuc.ca.gov
rafiling@cpuc.ca.gov

CPUC Home

CALIFORNIA PUBLIC UTILITIES COMMISSION
Service Lists

PROCEEDING: R1911009 - CPUC - OIR TO OVERSE
FILER: CPUC
LIST NAME: LIST
LAST CHANGED: JANUARY 18, 2022

Download the Comma-delimited File
About Comma-delimited Files

Back to Service Lists Index

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