PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

August 7, 2020

Nick Chaset
Chief Executive Officer
East Bay Community Energy
1111 Broadway, 3rd Floor
Oakland, CA 94607

Dear Mr. Chaset,

On December 18, 2019, East Bay Community Energy (East Bay) filed a waiver request via Advice Letter 5-E for its February 2020 month-ahead local Resource Adequacy (RA) requirement in the Sierra, Stockton, Humboldt, North Coast North Bay (NCNB) local areas. East Bay seeks relief from its remaining February 2020 month-ahead local RA obligation and any potential Commission-imposed penalties for deficiencies. East Bay's waiver request demonstrates that it pursued all commercially reasonable efforts in procuring local capacity to meet its local RA obligations. The Energy Division of the California Public Utilities Commission (Commission) approves Advice Letter 5-E, East Bay's request for a penalty waiver.

Commission Decision (D.) 06-06-064 established waiver provisions for local Resource Adequacy (RA) procurement. D.19-06-026 established 2020 compliance year obligations for all Load Serving Entities (LSEs). On December 18, 2019, East Bay submitted its February 2020 month-ahead local RA compliance filing, showing a deficiency in the Sierra, Stockton, Humboldt, NCNB local areas. East Bay also submitted a request for penalty waiver for this deficiency via Advice Letter 5-E pursuant to D.06-06-064 and D.19-06-026.

Section 3.3.12 of D.06-06-064 describes a standard that an LSE may use to demonstrate that it could not reasonably achieve its 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.*

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.

Energy Division has reviewed East Bay's actions and finds them reasonable considering the capacity available to meet East Bay's local RA obligation. In this case, Energy Division finds that East Bay held solicitations and pursued all commercially reasonable efforts to acquire the resources needed to meet the LSE's local procurement obligation. East Bay's waiver request includes confidential market-sensitive information supporting this finding. Thus, Energy Division grants Advice Letter 5-E, East Bay's request for a waiver of Commission penalties related to its February 2020 month-ahead local RA procurement.

Advice Letter 5-E is effective August 7, 2020.

Sincerely,



Edward Randolph
Deputy Executive Director for Energy and Climate Policy /
Director, Energy Division

Cc: EDComplianceReports@cpuc.ca.gov

ADVICE LETTER (AL) SUSPENSION NOTICE
ENERGY DIVISION

Utility Name: East Bay Community Energy	Date Utility Notified: May 12, 2020
Utility Number/Type: 201	[x] E-Mailed to: mbrandt@ebce.org
Advice Letter Number(s): 5-E	ED Staff Contact: Lily Chow
Date AL(s) Filed: December 18, 2019	ED Staff Email: lily.chow@cpuc.ca.gov
Utility Contact Person: Melissa Brandt	ED Staff Phone No.: 415-703-2575
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 January 18, 2020 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

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[X] 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 Lily Chow at lily.chow@cpuc.ca.gov.

cc:
EDTariffUnit

* 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:
☑ 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) #: 5-E (PUBLIC VERSION) Tier Designation: 2

Subject of AL: Request for Waiver from February 2020 Month Ahead Local Resource Adequacy Requirements; Request for Confidential Treatment (Attachment 1 - Mike Susko Declaration and Exhibits 1-42) in accordance with D.06-06-066, as modified by D.08-04-023, D.16-08-024 and D.17-09-023

Keywords (choose from CPUC listing):

AL Type: ☑ Monthly ☐ Quarterly ☐ Annual ☐ One-Time ☐ Other:

If AL submitted in compliance with a Commission order, indicate relevant Decision/Resolution #:
D.06-06-064, D.19-06-026 and Section 24 of the 2020 RA Compliance Filing Guide

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? ☑ Yes ☐ No

If yes, specification of confidential information: Attachment 1 - Mike Susko Declaration and Exhibits 1 - 42
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 ☑ No

Requested effective date: 1/17/20 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:

[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

ENERGY Advice Letter Keywords

Af□liate	Direct Access	Preliminary Statement
Agreements	Disconnect Service	Procurement
Agriculture	ECAC / Energy Cost Adjustment	Qualifying Facility
Avoided Cost	EOR / Enhanced Oil Recovery	Rebates
Balancing Account	Energy Charge	Refunds
Baseline	Energy Efficiency	Reliability
Bilingual	Establish Service	Re-MAT/Bio-MAT
Billings	Expand Service Area	Revenue Allocation
Bioenergy	Forms	Rule 21
Brokerage Fees	Franchise Fee / User Tax	Rules
CARE	G.O. 131-D	Section 851
CPUC Reimbursement Fee	GRC / General Rate Case	Self Generation
Capacity	Hazardous Waste	Service Area Map
Cogeneration	Increase Rates	Service Outage
Compliance	Interruptible Service	Solar
Conditions of Service	Interutility Transportation	Standby Service
Connection	LIEE / Low-Income Energy Efficiency	Storage
Conservation	LIRA / Low-Income Ratepayer Assistance	Street Lights
Consolidate Tariffs	Late Payment Charge	Surcharges
Contracts	Line Extensions	Tariffs
Core	Memorandum Account	Taxes
Credit	Metered Energy Efficiency	Text Changes
Curtailable Service	Metering	Transformer
Customer Charge	Mobile Home Parks	Transition Cost
Customer Owned Generation	Name Change	Transmission Lines
Decrease Rates	Non-Core	Transportation Electrification
Demand Charge	Non-firm Service Contracts	Transportation Rates
Demand Side Fund	Nuclear	Undergrounding
Demand Side Management	Oil Pipelines	Voltage Discount
Demand Side Response	PBR / Performance Based Ratemaking	Wind Power
Deposits	Portfolio	Withdrawal of Service
Depreciation	Power Lines	

Clear Form

December 18, 2019

Advice Letter No 5-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 February 2020 Month Ahead Local Resource Adequacy Requirements

Purpose

Pursuant to the California Public Utilities Commission's ("Commission" or "CPUC") Decision ("D.") 06-06-064, 19-06-026 and Section 24 of the Commission's RA Filing 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 February 2020 Month-Ahead Local Resource Adequacy ("RA") procurement obligations, and assess no Commission-imposed penalties on EBCE related to its shortfall in procurement of its February 2020 Local Resource Adequacy Requirements ("RAR").

Background

As detailed below, and as further described in EBCE's Request for Waiver from 2020 Local Resource Adequacy Requirements; Request for Confidential Treatment ("EBCE 2020 Annual Waiver Request")[1], EBCE has reasonably and in good faith solicited bids and has actively pursued all commercially reasonable efforts to acquire resources necessary to meet its February 2020 Local RA obligations. But EBCE has been unable to procure sufficient Local RA capacity in February 2020 for the 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 February 2020 Month-Ahead System Flexible RAR compliance filing.[2]

Additional information regarding the basis for EBCE's RA Waiver Request is set forth in and supported by the attached Updated Declaration of Mike Susko, EBCE's Power Resources

[1] East Bay Community Energy's Request for Waiver from 2020 Local Resource Adequacy Requirements ("EBCE 2020 Annual Waiver Request"); Request for Confidential Treatment as submitted to the Commission on October 31, 2019.

[2] *See* D.06-06-064; *see also* 2020 Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings ("RA Filing Guide"), at Section 24.

Manager.[3] Given the extensive market-sensitive information contained in the Updated Susko Declaration and its attachments, EBCE requests it be treated as **CONFIDENTIAL** pursuant to state law and the CPUC decisions further described in Section IV of the EBCE 2020 Annual Waiver Request.

Legal Standard

Pursuant to D.06-06-064, D.19-02-022, and as further described in Section 24 of the *2020 Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings*, 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]

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[3] *See* Attachment 1 (**CONFIDENTIAL**), Updated Declaration of Mike Susko in Support of EBCE's Request for Waiver from a Portion of EBCE's 2020 Local Resource Adequacy Procurement Obligation ("Updated Susko Declaration").

[4] *See* D.06-06-064, mimeo at 73; *see also* D.07-06-029, D.19-02-022, and RA Filing Guide, at 41-42.

[5] *Id*.

[6] *Id.*

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 additional Local RA capacity in the Greater Bay Area (Bay Area), Fresno, Humboldt, Kern, North Coast/North Bay (NCNB), Sierra and Stockton (collectively referred to herein as the "PG&E Local Areas") for February 2020. Because EBCE did not receive sufficient bids of Local RA to meet its February 2020 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 RA Filing Guide.

A. EBCE Reasonably and in Good Faith Solicited Bids for February 2020 Local RA in the PG&E Local Areas

As a new Community Choice Aggregator ("CCA") that commenced service to commercial and municipal customers in June 2018, and residential customers in November 2018, EBCE is relatively new to RA procurement. To best ensure that EBCE would be able to procure sufficient Local RA to meet its compliance obligations, EBCE's February 2020 procurement efforts were commenced many months before the Commission issued its preliminary 2020 RA allocations to all load serving entities ("LSEs").[7]

As further described in the Updated Susko Declaration, EBCE worked closely with ACES Power and the Northern California Power Agency ("NCPA"), which each serve as EBCE's agents, and each have many years of significant experience with the RA procurement process for various entities. EBCE's procurement efforts for February 2020 conducted prior to the October 31, 2019 Year-Ahead RAR filing deadline are fully described in the EBCE 2020 Annual Waiver Request.

After EBCE submitted its Year-Ahead Local Resource Adequacy filing on October 31, 2019, EBCE continued to seek bids to purchase Local RA throughout the date on which EBCE's February 2020 Month-Ahead System RAR filing is due. As a result of EBCE's efforts, EBCE was able to purchase additional volumes of Local RA for the Sierra load pocket, as such is reflected in EBCE's February 2020 Month-Ahead System RAR filing. Additionally, ACES Power, on behalf of EBCE, Monterey Bay Community Power, Peninsula Clean Energy, San Jose Clean Energy, and Silicon Valley Clean Energy issued a Request for Offers on December 11, 2019 requesting offers for Local RA in Humboldt, North Coast/North Bay, Sierra, Stockton, and Fresno for delivery from February 1, 2020. The solicitation was sent to 318 counterparties. In response to the solicitation, EBCE received only one (1) offer for Local RA for delivery in February 2020, however the offer was not only above our bid curve but significantly above market pricing.[8]Even though EBCE did not receive sufficient bids to procure Local RA to meet its entire February 2020 Local RA requirement, EBCE was able to

[7] The Commission provided EBCE with its preliminary 2020 RA allocations on July 26, 2019. The Commission then provided EBCE with its final 2020 RA allocations on September 20, 2019.
[8] *See* Updated Susko Declaration, at ¶¶ 25-28, Exh. 40-42.

purchase a total amount of System RA to meet its February 2020 Month-Ahead System RAR.

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 obligations because it has demonstrated: (1) that it reasonably and in good faith solicited bids for its February 2020 RAR capacity needs for the PG&E Local Areas, and (2) that it did not receive sufficient bids to meet its February 2020 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. If anything, EBCE's solicitation efforts may have been more robust in this instance than the efforts undertaken by other LSEs, given the multiple RFOs EBCE conducted, the number of bilateral transactions and range of potential transacting partners EBCE sought out, and the range of commercial structures EBCE considered as part of those bilateral transactions.

Protests

Anyone wishing to protest this filing may do so by filing a protest with the CPUC and EBCE by January 7, 2020, 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 PG&E 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 Street, Suite 800
Oakland, CA 94612
510-570-5110
mbrandt@ebce.org

Effective Date

EBCE requests that this Tier 2 advice letter become effective on January 17, 2020, which is 30 days after the date of submittal.

Notice

Pursuant to Section 24 of the 2020 RA Guidebook, 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.17-09-020.

Tier Designation

Pursuant to Section 24 of the 2020 RA Guidebook, 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.

Respectfully submitted this 18th day of December, 2019, at Oakland, California.



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

cc: R.17-09-020 Service List
RAFiling@cpuc.ca.gov

ATTACHMENT 1

UPDATED DECLARATION OF MIKE SUSKO IN SUPPORT OF EAST BAY COMMUNITY ENERGY'S REQUEST FOR WAIVER FROM ITS 2020 YEAR-AHEAD LOCAL RESOURCE ADEQUACY PROCUREMENT OBLIGATIONS

(ENTIRE ATTACHMENT 1 IS CONFIDENTIAL)

CALIFORNIA PUBLIC UTILITIES COMMISSION
Service Lists

PROCEEDING: R1709020 - CPUC - OIR TO OVERSE
FILER: CPUC
LIST NAME: LIST
LAST CHANGED: DECEMBER 18, 2019

Parties

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