

**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 Refinements, and Establish Annual
Local and Flexible Procurement Obligations
for the 2019 and 2020 Compliance Years.

R.17-09-020
(Filed September 8, 2017)

**PETITION FOR MODIFICATION OF DECISION 19-02-022 BY
THE ALLIANCE FOR RETAIL ENERGY MARKETS**

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In accordance with the provisions of Section 16.4 of the Commission’s Rules of Practice and Procedure, this petition for modification is filed by the Alliance for Retail Energy Markets¹ (“AReM”) with regard to Decision (“D.”) 19-02-022 (the “Decision”), issued on February 21, 2019, in Track 2 of the above-captioned proceeding. Rule 16.4(b) provides in part, as follows:

A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed.

This Petition complies with these requirements and is filed within less than a year after the issuance of the Decision, in compliance with Rule 16.4(c).

I. BACKGROUND TO PETITION.

Prior to the issuance of the Decision, the Local RA requirements for each of six separate Local Capacity Areas in northern California (Fresno, Humboldt, Kern, North Coast/North Bay,

¹ AReM is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California’s direct access (“DA”) market. This filing represents the position of AReM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

Sierra, Stockton) were aggregated for procurement and compliance purposes to address the inherent market power in these Local Capacity Areas.² This aggregation was referred to as “Other PG&E” and allowed Load Serving Entities (“LSEs”) to procure Local RA from resources in any of the six Local Capacity Areas to meet its “Other PG&E” Local RA obligation.³ In D.19-02-022, the Commission referred to this aggregation as “PG&E Other” and ordered that PG&E Other “shall be disaggregated to the local capacity area”⁴ beginning with the 2020 RA procurement cycle. As such, LSEs will be assigned separate RA obligations for each of the six Local Capacity Areas.

II. DESCRIPTION OF ISSUES ASSOCIATED WITH THE DISAGGREGATION OF PG&E OTHER THAT THIS PETITION SEEKS TO ADDRESS.

The disaggregation of PG&E Other creates complexities and potential economic harm for any LSE with RA purchase contracts for PG&E Other RA that: (i) were executed prior to the effective date of the Decision; and (ii) will be delivered in the 2020 RA compliance year or beyond.

First, the resources from which the LSE procured Local RA to meet the requirements for PG&E Other may not match the LSE’s newly assigned Local Capacity Requirements in the six discreet Local Capacity Areas. That is, an LSE may have already procured to meet some or all of its expected obligation in PG&E Other prior to the passage of the Decision, but now may find that the resources it procured may make it long in certain Local Capacity Areas that formerly comprised PG&E Other before disaggregation, and short in others.

Second, some RA purchase contracts do not specify the facilities that will provide the RA because they allow the seller to specify the resources at a later date. As such, buyers with these types of PG&E Other contracts do not have the right to require the seller to provide Local RA from

² See, for example, D.19-02-022, p. 30 and D.06-06-064, pp. 69-70.

³ D.06-06-064, p. 38.

⁴ D.19-02-022, Ordering Paragraph 15.

specific generation facilities that meet the buyer's Commission-ordered newly-disaggregated Local RA requirements. Thus, the units ultimately provided by the seller may not meet the disaggregated PG&E Other Local RA requirements imposed on an LSE.

As a result, a buyer with PG&E Other Local RA contracts in its existing portfolio of RA resources may be faced with costly additional Local RA procurement in order to ensure that it has acquired sufficient Local RA in the appropriate newly-disaggregated Local Capacity Areas. Moreover, the LSE's existing purchases of Local RA that were intended to meet the previous PG&E Other Local RA obligation may become useless for meeting the newly-disaggregated Local RA compliance obligations, and therefore stranded. These possibilities are compounded by the fact that RA purchases and sales are bilateral only, which can make it difficult for buyers and sellers to enter into the discreet transactions with one another to help restructure their Local RA portfolios to meet the newly-disaggregated PG&E Other Local RA requirements.

AReM is continuing to work with PG&E and other counterparties to determine if our existing contracts can be modified to address disaggregation but is uncertain as to whether or not that can ultimately provide the economic protections that the grandfathering requested herein would achieve, and therefore we ask for prompt action on this Petition.

III. PETITION FOR MODIFICATION.

AReM respectfully requests that the Commission modify the Decision to ensure that Commission-jurisdictional LSEs holding Local RA contracts for resources in PG&E Other for years 2020 and beyond executed prior to the effective date of the Decision can fully utilize them for RA compliance for the duration of the original contract term.

The necessary modifications to the Decision would first recognize that RA contracts entered into by LSEs for PG&E Other Local RA capacity should be allowed to count toward any

of the newly-disaggregated Local Capacity Areas previously aggregated into PG&E Other for their remaining terms, but no longer. After it has applied all its existing PG&E Other purchases to its RA requirement in the newly-disaggregated Local Capacity Areas, the LSE would be required to purchase incremental Local RA in any of the six Local Capacity Areas in which it has a deficiency, if applicable, for full compliance.

As an example, if an LSE has Local RA obligations in each of the newly-disaggregated Local Capacity areas that in combination total 100 MW of RA requirements, and has contracts entered into prior to D.19-02-022 for PG&E Other that also total 100 MW, but with specified resources located only in two of the newly-disaggregated Local Capacity Areas, that LSE could fully utilize its PG&E Other contracts to meet the 100-MW Local RA obligation. If the LSE had 80 MW of previously procured generic PG&E Other contracts, it could apply those resources to any newly-disaggregated area, then would need to procure 20 MW of resources specific to newly-disaggregated zones where a remaining shortfall existed.

In addition, if an LSE's existing PG&E Other Contracts do not specify the Local Capacity Area in which the RA resource is located, the LSE should meet and confer with the seller to determine if they can renegotiate the contract so that it specifies resources in one or more of the newly-disaggregated Local Capacity Areas. Good faith discussions to match as best as possible an LSE's needs in each disaggregated Local Capacity area with a seller's supply is desired, recognizing that such renegotiations must be mutually acceptable to the LSE and the seller. Successful negotiations to match resources with an LSE's new requirements would minimize the amount of assignment for generic PG&E Other to any disaggregated locations.

AReM provides the specific modifications requested to D.19-02-022 in Appendix A.

IV. CONCLUSION.

Approval of this request would be reasonable and appropriate for several reasons. First, it would remedy the unfair possibility that LSEs that had been prudent in acquiring their RA requirements on a timely basis might be subject to any penalty for non-compliance with the newly-disaggregated Local Capacity Areas.

Second, it would recognize the commercial reality that at least up until this time, LSEs have entered into non-unit contingent RA contracts that have been permitted to be utilized to satisfy the PG&E Other Local Capacity Area requirement.

Third, it would be consistent with past Commission actions to grandfather existing contractual arrangements, such as in D.11-01-025, where the Commission clarified the process for its review of utilities' contracts for procurement of TRECs that were submitted prior to the effective date of D.10-03-021 and extended the termination dates of the temporary limit on the use of TRECs for RPS compliance.⁵

Fourth, it would be in accord with the Commission's recent pronouncements in D.19-03-012,⁶ that, "the sanctity of contracts is paramount and that market actors need to have faith and confidence in this Commission's commitment to uphold its commitment to an approved contract, just as we expect the contractual counterparties to do the same."⁷ While an individual LSE's RA contracts may not be subject to express Commission approval, the principle is the same in either case. LSEs subject to the Commission's RA requirements also need to have faith and confidence

⁵ D.11-01-025, at pp. 17-21.

⁶ *Decision Denying Protect Our Communities Foundation Petition for Modification of Decision 06-09-021, Concerning Otay Mesa Energy Center*, issued April 5, 2019.

⁷ D.19-03-012, at p. 23.

that the Commission's updates to the RA requirements will not invalidate good faith steps taken to comply with the pre-existing requirements.

Revisions to the Decision to accomplish the results sought herein are attached as Exhibit A to the pleading. AReM thanks the Commission for its attention to this request.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Daniel W. Douglass". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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Attorneys for the
ALLIANCE FOR RETAIL ENERGY MARKETS

May 24, 2019

Exhibit A

Suggested Revisions to D.19-02-022

Pages 30-31:

Because we adopt LSE-based requirements, we believe that the disaggregation of the “PG&E Other” local area is a necessary first step towards addressing inefficient procurement that may lead to backstop procurement. This level of disaggregation will also provide useful feedback to the Commission in assessing further disaggregation to the sub-local area level. The Commission also encourages LSEs to consider sub-local needs when making procurement decisions so as to avoid inefficient procurement.

At the same time, we also recognize that heretofore, in accordance with the pre-existing Local RA requirements, LSEs may have entered into RA purchase contracts for PG&E Other RA that: (i) were executed prior to the effective date of this decision; and (ii) will be delivered in the 2020 RA compliance year or beyond. Also, some RA purchase contracts are non-unit contingent; that is, the buyer does not know for certain which specific RA resources it has purchased capacity from, allowing the seller the right to specify the resources from which the RA will be provided. Buyers that have non-unit contingent PG&E Other contracts do not have the right to require the seller to provide Local RA from specific generation facilities that meet the buyer’s Commission-ordered newly-disaggregated Local RA requirements. Thus, the units being provided by the seller may not meet the disaggregated PG&E Other Local RA requirements imposed on an LSE. Therefore, LSEs holding Local RA contracts for resources in the PG&E Other Local Capacity Area for years 2020 and beyond executed prior to the effective date of this decision can fully utilize them for RA compliance for the duration of the original contract term.

The Commission also encourages sellers and buyers to engage in good faith negotiations to assign resources in existing contracts to match the needs of buyers in the newly disaggregated PG&E Other zones.

Page 43, New Findings of Fact 16 and 17:

16. LSEs may have entered into RA purchase contracts for PG&E Other RA that: (i) were executed prior to the effective date of this decision; and (ii) will be delivered in the 2020 RA compliance year or beyond.

17. Some RA purchase contracts are non-unit contingent; that is, the buyer does not know for certain which specific RA resources it has purchased capacity from, allowing the seller the right to specify the resources from which the RA will be provided.

Page 44, New Conclusion of Law 11 (following Conclusions of Law to be renumbered accordingly):

11. There is longstanding Commission precedent affirming the sanctity of contracts.

Page 47, Modification to Ordering Paragraph 15:

15. The “Pacific Gas and Electric Company (PG&E) Other” local area shall be disaggregated to the local capacity area. LSEs holding Local RA contracts for resources in the PG&E Other Local Capacity Area for years 2020 and beyond executed prior to the effective date of this decision can fully utilize them for RA compliance for the duration of the original contract term.