

**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.

Rulemaking 17-09-020  
(Filed September 28, 2017)

**COMMENTS OF THE  
ALLIANCE FOR RETAIL ENERGY MARKETS  
ON TRACK 3 PROPOSED DECISION**

Sue Mara  
RTOADVISORS, L.L.C.  
164 Springdale Way  
Redwood City, CA 94062  
Telephone: (415) 902-4108  
E-mail: [sue.mara@rtoadvisors.com](mailto:sue.mara@rtoadvisors.com)

CONSULTANT TO  
**ALLIANCE FOR RETAIL ENERGY MARKETS**

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## **SUBJECT INDEX OF RECOMMENDED CHANGES TO PROPOSED DECISION**

- Clarifying the definition of “Load Migration” and its relationship to load serving entities’ (“LSEs”) “Best Estimate” obligation in Decision 04-10-035.
- Replacing the term “Binding Notice of Intent” (“BNI”) with “Binding Forecast” to avoid confusion.
- Adding a validity check for direct access load when assessing the *pro rata* allocation on LSEs’ load forecasts.
- Clarifying that the “implementation plans” referenced in the plausibility review apply to Community Choice Aggregators.
- Clarifying that certain load forecasting modifications take effect for the 2022 Resource Adequacy (“RA”) compliance year.
- Clarifying the length of time the new Local RA waiver trigger price and local RA penalty price are in effect.
- Add as a workshop topic consideration of seasonal-varying Local RA requirements.

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ON TRACK 3 PROPOSED DECISION**

The Alliance for Retail Energy Markets (“AReM”)<sup>1</sup> respectfully provides these comments on the proposed decision (“PD”), *Decision Adopting Local Capacity Obligations for 2020-2022, Adopting Flexible Capacity Obligations for 2020, and Refining the Resource Adequacy Program*, issued on May 24, 2019 by California Public Utilities Commission (“Commission”) Administrative Law Judge Debbie Chiv.

**I. INTRODUCTION**

AReM is generally supportive of the PD and looks forward to addressing the additional Track 3 proposals submitted by parties later in this proceeding.<sup>2</sup> However, several issues require clarification or correction regarding the adjustments to the Resource Adequacy (“RA”) load forecasting process set forth in the PD and the waiver trigger and penalty prices for Local RA. AReM addresses these issues in the following sections and recommends revisions to the PD to

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<sup>1</sup> AReM is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California’s direct access 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.

<sup>2</sup> PD, p. 5: “Issues within the scope of the proceeding that are not addressed here, or that are only partially addressed, may be addressed in a later phase of this proceeding.”

correct inaccuracies or improve clarity. In addition, AReM provides specific recommended revisions to the Findings of Fact, Conclusions of Law and Ordering Paragraphs of the PD in the Appendix.

## **II. CLARIFYING CHANGES TO LOAD FORECASTING PROCESS**

### **A. Clarifying the Definition Of “Load Migration” And Its Relationship To The “Best Estimate” Obligation In Decision 04-10-035.**

The PD adopts a modified version of Energy Division’s proposal for the definition of “load migration” and directs that it take effect immediately.<sup>3</sup> AReM is concerned that the adopted definition -- and the “non-exhaustive list of events” that are not to be included in “load migration” -- lack clarity and add confusion. As a result, the definition and separate list of “exclusions” are likely to be interpreted differently by each load-serving entity (“LSE”), as well as by the Staffs of the Commission and the California Energy Commission (“CEC”) that are charged with enforcing this requirement. AReM urges the Commission to revise the PD to direct Energy Division staff to promptly convene a joint workshop with the CEC to clarify for LSEs how this definition will be interpreted and enforced by Staff. In the Appendix, AReM provides recommended revisions to Ordering Paragraph 11 to implement this proposed change.

Moreover, the PD fails to address how this definition relates to or interacts with each LSE’s “best estimate” obligation for forecasting load migration that the Commission adopted in Decision (“D.”) 04-10-035 and re-confirmed in D.05-10-042. Specifically, D.04-10-035 directed that LSEs prepare load forecasts using “best estimates” as follows:

Conclusion of Law 7: LSEs shall prepare load forecasts on the basis of their best estimate of future customers and their loads.

The Commission confirmed this obligation in D.05-10-042:

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<sup>3</sup> PD, pp. 27 and 38, and Ordering Paragraph 11.

Conclusion of Law 11: Modification of D.04-10-035 to vacate the best estimate approach to load forecasting should be denied.

While Energy Division’s proposal mentions this “best estimate” obligation in passing,<sup>4</sup> the proposal never explains the relationship between this long-standing obligation and the proposed new definition of load migration. LSEs endeavoring to prepare load forecasts that comply both with this new definition as well as their “best estimate” obligation under D.04-10-035 should be provided with clarity to avoid inadvertent non-compliance. As a remedy, AReM requests that the Staff workshop recommended above to clarify the definition of load migration also address how the new “load migration” definition interacts with LSEs’ “best estimate” obligation. Conforming revisions to Ordering Paragraph 11 are provided in the Appendix.

#### **B. Revising The Terminology Used For The Binding Forecast Process.**

The PD adopts Energy Division’s proposal for adjustments to the RA load forecasting process, which Energy Division terms the “Binding Notice of Intent” or “BNI” process. However, this term – “Binding Notice of Intent” – has been applied heretofore solely to the well-known process by which Community Choice Aggregators (“CCAs”) notify the Commission and affected investor-owned utilities (“IOUs”) of their future plans for serving load. The BNIs for CCAs encompass many elements and requirements that are completely unrelated to RA load forecasting or other RA activities by Electric Service Providers (“ESPs”).<sup>5</sup> Therefore, AReM believes that applying this “Binding Notice of Intent” term to the RA load forecasting process, which is intended to be applicable to all LSEs, will be confusing and misleading. AReM recommends that this process be re-named the “Binding Forecast” or “BF” process to avoid confusion and improve clarity. AReM provides conforming changes in the Appendix.

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<sup>4</sup> Energy Division’s Track 3 Proposals, *Staff White Paper and Proposal A: Updates to the RA Load Forecasting Process*, R.17-09-020, March 4, 2019, p. 16.

<sup>5</sup> See, for example, D.05-12-041 in R.03-10-003 resolving Phase 2 issues related to CCA programs.

### **C. Clarifying That The *Pro Rata* Load Forecast Adjustment Includes A Validity Check For Direct Access Load.**

The PD largely adopts Energy Division’s proposal for adjustments to the RA load forecasting process, including modifications to the plausibility review process.<sup>6</sup> In comments on Energy Division’s proposal, AReM requested further clarification on the process for assessing *pro rata* allocations to LSEs’ load forecasts.<sup>7</sup> Specifically, AReM noted that the presentation by the CEC at the March 12, 2019 RA workshop referenced a “validity check” on the *pro rata* adjustment made to LSEs’ load forecasts, including verification that the total *pro rata* adjustments made to the loads of the ESPs do not exceed either the direct access load served or the current direct access cap set by statute.<sup>8</sup> This important validity check, which AReM also included in its own Track 3 proposals,<sup>9</sup> is not mentioned in Staff’s written proposal,<sup>10</sup> nor is it addressed in the PD.<sup>11</sup> AReM requests that the PD be modified to clarify that the adopted load forecasting process refinements include this additional step. In the Appendix, AReM provides conforming revisions to the affected Finding of Fact, Conclusion of Law and Ordering Paragraph.

### **D. Clarifying That Plausibility Review Trigger #1 Applies To CCAs.**

The PD adopts Energy Division’s proposal for plausibility review triggers by Commission Staff and the CEC.<sup>12</sup> The discussion in Section 3.5.3 in the PD references LSE’s

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<sup>6</sup> PD, pp. 30-31.

<sup>7</sup> *Comments of the Alliance for Retail Markets on Track 3 Proposals*, R.17-09-020, March 22, 2019, pp. 2-3.

<sup>8</sup> CEC’s Load Forecasting Presentation, RA Workshop, March 12, 2019, slide 12.

<sup>9</sup> *Track 3 Proposals of the Alliance for Retail Markets*, R.17-09-020, March 4, 2019, p. 3.

<sup>10</sup> Energy Division discusses *pro rata* allocations for LSEs’ load forecasts in its Track 3 Proposals, *loc. cit.*, p. 15.

<sup>11</sup> The PD, p. 28, discusses the *pro rata* adjustment, but does not address AReM’s concern.

<sup>12</sup> PD, pp. 30-31.



“implementation plans” several times and includes that term as part of plausibility review trigger #1:

- (1) If an LSE’s initial year ahead load forecast for a given month (or the system RA requirement implied by adjusting for coincidence and adding a 15 percent Planning Reserve Margin (PRM)) deviates from the corresponding forecast (or system RA requirement) in its **implementation plan** by more than 5 percent of the latter;”<sup>13</sup>

However, only CCAs have “implementation plans.” ESPs have nothing comparable, nor do the IOUs. Thus, plausibility review trigger #1 is inaccurate and misleading by indicating that *all LSEs* have implementation plans. For comparison, the PD includes two more “plausibility review triggers” that apply equally to all LSEs, including ESPs and CCAs.<sup>14</sup> AReM has no objection to plausibility review triggers #2 and #3, but requests that the PD be revised to clarify that the references to an LSE’s “implementation plan” in Section 3.5.3 and in plausibility review trigger #1 refer solely to CCAs.

#### **E. Clarifying Implementation Of Modifications To Final Load Forecasts.**

The PD implements a new requirement that the initial and final year-ahead load forecasts by LSEs may only differ due to load migration.<sup>15</sup> Recognizing that LSEs need load data from the IOUs to provide accurate initial load forecasts, the PD also imposes data sharing requirements on the IOUs and LSEs,<sup>16</sup> which it requires the IOUs to implement for the 2022 RA compliance year.<sup>17</sup> Importantly, the PD delays the new requirement on final load forecasts until the IOUs’ data sharing process is implemented.<sup>18</sup> However, Ordering Paragraph 10 states that “this

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<sup>13</sup> PD, p. 30, emphasis added.

<sup>14</sup> PD, pp. 30-31.

<sup>15</sup> PD, p. 27, Conclusion of Law 9 and Ordering Paragraph 10.

<sup>16</sup> PD, pp. 32-26.

<sup>17</sup> Ordering Paragraph 15 requires the IOUs to implement the data sharing requirements as of the “2022 year ahead load forecasting process,” which takes place in 2021.

<sup>18</sup> PD, p. 27: “However, until the full implementation of the adopted data sharing requirements, it is

modification shall begin in the 2021 year ahead forecasting process,” which could be interpreted incorrectly as the 2021 RA compliance year. Accordingly, as shown in the Appendix, AReM requests that Ordering Paragraph 10 be revised to improve clarity and avoid misunderstanding by adding that the modification takes effect for 2022 RA compliance year.<sup>19</sup>

### **III. CLARIFYING REVISED WAIVER TRIGGER PRICE AND LOCAL RA PENALTY PRICE**

AReM seeks clarification on the new Local RA waiver trigger price and the associated Local RA penalty price. The PD states as follows:

Accordingly, the Commission updates the local trigger price from \$40/kW-year to an annualized value of the 85th percentile of the monthly South of Path 26 local RA value, or \$51/kW-year. The Commission also raises the local RA penalty price of \$3.33/kW-month to \$4.25/kW-month, the equivalent value of the newly-adopted trigger price of \$51/kW-year.<sup>20</sup>

In addition, Conclusion of Law 4 and Ordering Paragraph 6 reference both the formula and the \$51/kW-year price regarding the Local RA waiver trigger price:

Conclusion of Law 4: Raising the local trigger price to an annualized value of the 85th percentile of the monthly local RA prices for South of Path 26 is a reasonable figure.

Ordering Paragraph 6. The local Resource Adequacy (RA) waiver trigger price of \$40/kW-year, adopted in Decision 06-06-064, shall be updated to the annualized value of the 85th percentile of the monthly local RA prices for South of Path 26, or \$51/kW-year.

Thus, the PD is unclear as to whether the new waiver trigger price is revised annually based on the formula included in the PD or set at \$51/kW-year until revised by a subsequent Commission decision.

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reasonable that certain LSEs’ final load forecasts may need to be modified with new or updated customer opt-out data. On an interim basis until the year ahead process for the 2022 compliance year, LSEs may incorporate changes resulting from the receipt of new or updated customer meter data in their final year ahead forecasts.” See also, footnote 46, p. 27.

<sup>19</sup> In the Appendix, AReM proposes this same correction to Ordering Paragraph 13 for the same reasons.

<sup>20</sup> PD, p. 17.

Similarly, Ordering Paragraph 7 references setting the Local RA penalty price “equivalent” to the adopted waiver trigger price:

Ordering Paragraph 7. The local Resource Adequacy (RA) penalty price of \$3.33/kW-month shall be raised to the equivalent value of the newly-adopted local RA trigger price, or \$4.25/kW-month.<sup>21</sup>

Because the Local RA penalty price is set relative to the RA trigger price, the PD’s references to the Local RA penalty price also need clarification.<sup>22</sup>

AReM respectfully requests that the PD be revised to clarify these significant provisions in the PD and to specify whether the waiver trigger price is set at \$51/kW-year or will be revised annually.<sup>23</sup> Further, if the Commission intends to revise the waiver trigger price annually, it should further clarify *when* the adjustment will be made and by what process.

#### **IV. ADDING FUTURE WORKSHOP TOPIC**

The PD notes that issues within the scope of the proceeding not addressed therein “may be addressed in a later phase of this proceeding.”<sup>24</sup> The PD also lists several topics to be addressed in future workshops, including further evaluation of the underlying reasons for the recent increase in Local RA waiver requests<sup>25</sup> and consideration of proposals to extend the waiver request process beyond Local RA.<sup>26</sup> AReM endorses these workshop topics. AReM further requests that the Commission add, as a workshop topic, consideration of the Track 3 proposal made by Pacific Gas and Electric Company (“PG&E”) to establish seasonal-varying Local RA requirements.<sup>27</sup> AReM has endorsed the concept of seasonal Local RA requirements

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<sup>21</sup> See also: PD, Finding of Fact 5 and Conclusion of Law 5.

<sup>22</sup> PD, p. 17 and Finding of Fact 5, Conclusion of Law 5 and Ordering Paragraph 7.

<sup>23</sup> *Ibid* and Finding of Fact 5, Conclusion of Law 4 and Ordering Paragraph 6.

<sup>24</sup> PD, p. 5.

<sup>25</sup> PD, p. 17.

<sup>26</sup> PD, p. 20.

<sup>27</sup> *Track 3 Proposals of Pacific Gas and Electric Company*, R.17-09-020, January 4, 2019, pp. 6-8.

when proposed in the past and endorsed this proposal by PG&E in its comments on Track 3 proposals in this proceeding.<sup>28</sup> As AReM previously explained, seasonal Local RA requirements would provide LSEs with additional flexibility in procuring RA and reduce the potential for over-procurement.<sup>29</sup>

## V. CONCLUSION

AReM focuses the majority of its comments on provisions that lack clarity or require correction in the PD regarding adjustments to the RA load forecasting process and revised Local RA waiver trigger and penalty prices. In addition, AReM requests an additional workshop topic for the next phase of this proceeding addressing seasonal-varying Local RA requirements. In summary, AReM respectfully requests that the PD be modified as described herein and set forth in the Appendix to:

- Direct Energy Division to promptly hold a workshop to clarify for LSEs the definition of “Load Migration” and its relationship to LSEs’ “Best Estimate” obligation in D.04-10-035.
- Replace the term “Binding Notice of Intent” with “Binding Forecast” to avoid confusion.
- Clarify that the adopted load forecasting adjustments include a validity check for direct access load.
- Clarify that “implementation plans” and plausibility review trigger #1 apply to CCAs.
- Clarify that the certain load forecasting modifications take effect for the 2022 RA compliance year.
- Clarify whether the new waiver trigger price is revised annually based on the formula included in the PD or set at \$51/kW-year until revised by a subsequent Commission decision and make conforming changes to the provisions addressing the Local RA penalty price.

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<sup>28</sup> AReM’s March 22<sup>nd</sup> Comments, *loc. cit.*, pp. 14-15.

<sup>29</sup> *Comments on Preliminary Phase 3 Proposals by the Alliance for Retail Energy Markets*, R.14-10-010, January 13, 2017, p. 4.

- Add as a workshop topic consideration of seasonal-varying Local RA requirements.

AReM appreciates the Commission's attention to its concerns.

Respectfully submitted,

A handwritten signature in black ink that reads "Sue Mara". The signature is fluid and cursive, with the first name "Sue" and last name "Mara" clearly distinguishable.

Sue Mara  
CONSULTANT TO  
ALLIANCE FOR RETAIL ENERGY MARKETS

June 13, 2019

**APPENDIX OF PROPOSED MODIFICATIONS TO  
FINDING OF FACT, CONCLUSION OF LAW  
AND ORDERING PARAGRAPHS**

**REVISIONS TO FINDING OF FACT**

9. Energy Division's proposal for a Binding ~~Notice of Intent~~ **Forecast** process, **with an added validity check on total direct access load**, will encourage effective forecasting in the year ahead process and discourage modifications to load forecasts for reasons other than unpredictable load migration.

**REVISIONS TO CONCLUSION OF LAW**

12. Energy Division's proposal for a Binding ~~Notice of Intent~~ **Forecast** process should be adopted **with an added validity check on total direct access load**.

**REVISIONS TO ORDERING PARAGRAPHS**

10. Load migration shall be the only allowable reason for differences between initial and final year ahead load forecasts. This modification shall begin in the 2021 year ahead forecasting process **for the 2022 compliance year**.
13. Energy Division's Binding ~~Notice of Intent~~ **Forecast** proposal, as discussed in Section 3.5.3, is adopted **with an added validity check on total direct access load**. This adopted modification shall begin for the 2021 year ahead forecasting process **for the 2022 compliance year**.
11. "Load migration" is defined, for the purposes of the Resource Adequacy program, as both:
- a. Load effects resulting from one or more customers' retail electric service transferring directly from one load-serving entity (LSE) to another LSE in the same Transmission Access Charge area; and
  - b. Load effects that an LSE cannot reasonably predict and include in an implementation plan or in an initial year ahead load forecast.

The adopted definition of "load migration" shall be effective upon the date of this decision.

**Energy Division shall immediately convene a workshop jointly with the CEC to**

**clarify for LSEs how this definition will be interpreted and enforced and how it interacts with the “best estimates” obligation for load forecasting by LSEs.**