

**From:** Colin.Cushnie@sce.com  
**Sent:** Thursday, January 21, 2010 12:55 PM  
**To:** Dorman, Elizabeth  
**Subject:** Re: RA/CCM stuff

**Attachments:** CFCMA\_ED\_11-7-07\_LAW-#1426272-v6-R\_05-12-013\_Briefing\_Memo\_re\_FERC\_CPUC\_Jurisdiction\_for\_CCM.DOC

Hi, Elizabeth. I hope the new year is treating you well! Attached is the requested legal analysis (albeit somewhat dated now). Please note that we have not been saying that the CPUC would/could retain jurisdiction over a Centralized Capacity Market (CCM). Instead, we are saying that the CPUC retains significant rights and influence over the nature of the state's procurement activity. FERC clearly regulates wholesale markets, whether we are talking about today's bilateral RA market, the standard capacity product that is contemplated in Wetzell's PD, or the CCM design advocated by SCE and many others.

The CPUC, however, regulates its retail markets, and by extension, procurement decision-making by its jurisdictional entities. For example, the state clearly regulates portfolio standards (RPS, preferred loading order, etc), environmental preferences, to the extent they do not conflict with Federal Law (e.g., GHG, fuel mix), and procurement rules. It is through these mechanisms that we say the CPUC and California can continue to guide the state's energy procurement activities while allowing a CCM to operate to ensure resource sufficiency and retail competition.

I'm not an attorney, but in response to a similar question from Matt Deal, I provided the following earlier today (thanks in large part to assistance provided by RRI which is active in the eastern markets):

*The Supreme Court recently declined to hear the Connecticut DPU's appeal of the DC Circuit's opinion in support of the ISO-NE Installed Capacity Requirement (No. 07-1375). I suspect that there may be some at the CPUC who will look at this decision as affirming FERC's jurisdiction over states, but the DC Circuit made clear that a state's rights to do guide procurement are unaffected. Specifically, the court found that "state and municipal authorities retain the right to forbid new entrants from providing new capacity, to require retirement of existing generators, to limit new construction to more expensive, environmentally friendly units, or to take any other action in their role as regulators of generation facilities without direct interference from the Commission."*

*FERC precedent and the CAISO Tariff further bolster the authority of the CPUC – with or without a centralized capacity market. As CFCMA has explained to CPUC staff, FERC stated that "we recognize the states' historical role in ensuring resource adequacy. The fact that we must, to fulfill our statutory responsibilities, be assured of a workable approach to resource adequacy does not mean that we should ignore the states' traditional role in this area. Rather, we can fulfill our jurisdictional responsibilities while also respecting the states' traditional role in this area. As a general matter, it is our responsibility to ensure that a workable resource adequacy requirement exists in a market such as that operated by the CAISO. This does not mean that we must determine all the elements of such a program in the first instance. Rather, we can, in appropriate circumstances, defer to state and Local Regulatory Authorities to set those requirements." (116 FERC P 61,274).*

*We've also previously pointed out that the CAISO Tariff provides several examples of deference to the CPUC, including:*

*1) The nature of the data required to be shared by the LSE with the CAISO, the required reserve margin,*

*the criteria for determining qualifying resource types and their qualifying capacity, demand forecast requirements, and the requirements for annual and monthly Resource Adequacy Plans. (Section 40.2.1.1(a) through (e) of the CAISO Tariff)*

*2) The CAISO Tariff explicitly requires collaboration with the CPUC in the performance of the Local Capacity Technical Study, and will allocate the Local Capacity Area Resource obligation in accordance with the allocation methodology adopted by the CPUC. (Section 40.3 and 40.3.2(c) of the CAISO Tariff.)*

*3) The CAISO is required to use criteria provided by the CPUC or Local Regulatory Authority to determine and verify the Qualifying Capacity of all Resource Adequacy Resources (Section 40.4.1), and to dispatch Participating Loads in accordance with the terms and conditions established by the Commission or Local Regulatory Authority (Section 40.6.12).*

Please let me know if you think we have mischaracterized the nature of the debate or intent of FERC with respect to regulation and control over the procurement activities of state-jurisdictional entities. Thanks!

Colin

From: "Dorman, Elizabeth" <edd@cpuc.ca.gov>  
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Date: 01/21/2010 11:49 AM  
Subject: RA/CCM stuff

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Hi Colin,  
Long time no see!

I was wondering if you could send me the legal analysis that SCE's outside counsel did on how/why the CPUC would/could retain jurisdiction over a Centralized Capacity Market? I've misplaced my copy.  
Thanks!

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