

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Integrate and Refine
Procurement Policies and Consider Long-Term
Procurement Plans.

R.10-05-006
(Filed May 6, 2010)

**COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS
ON PRELIMINARY SCOPING MEMO**

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June 4, 2010

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The Alliance for Retail Energy Markets (“AReM”)¹ respectfully submits these comments, in accordance with the Order Instituting Rulemaking (“OIR”) in Rulemaking (“R.”) 10 -05-006, filed May 6, 2010, which set this date for submission of opening comments on the Preliminary Scoping Memo.

I. REQUIRE UTILITIES TO EXCLUDE DIRECT ACCESS FROM BUNDLED LOAD FORECASTS IN TRACK II AND TO USE THE FORECASTS PRODUCED IN THE 2009 INTEGRATED ENERGY POLICY REPORT AS THE BASIS FOR ESTABLISHING BUNDLED LOAD NEEDS

Track II will address “Section 454.5 Bundled Plans” for the utilities. In R.06 -02-013, the last LTPP for which utility plans were developed, the utility load forecasts were extremely controversial. One of the specific issues in that proceeding had been that there was a wide disparity among the utilities as to how they accounted for (or ignored) direct access load over the planning period.² This important issue of having the bundled load forecasts account for retail choice load migration must be specifically addressed to ensure that the utilities do not over -procure to meet

¹AReM is a California mutual benefit corporation formed by electric service providers that are active in California's direct access market. The positions taken in this filing represent the views of AReM but not necessarily those of individual members or affiliates of its members with respect to the issues addressed herein.

² D.07-12-052, pp. 116-117.

inflated power needs and then seek stranded costs from direct access customers for their over-procurement.

In fact, such over-procurement is likely to the extent that the utilities choose to cling to anachronistic beliefs about the future of direct access. For example, Pacific Gas and Electric Company (“PG&E”) recently filed documents in Phase I of its General Rate Case showing direct access load declining both in absolute terms and in percent -of-load served.³ Direct access has reopened pursuant to Senate Bill (“SB”) 695 and a utility position that direct access will diminish over time requires careful scrutiny.

To ensure that such forecasting irregularities do not occur, the California Energy Commission (“CEC”) in accordance with the 2009 Integrated Energy Policy Report (“IEPR”), which was issued in December 2009, will be providing direct access forecast load for each of the investor-owned utilities (“IOUs”).⁴ Specifically, during the 2009 IEPR proceeding, the CEC agreed to develop forecasts for direct access and, as provided in the 2009 published report, will soon produce a “supplemental analysis that disaggregates the 2009 IEPR planning area forecasts into bundled and direct access segments.”⁵ AReM requests that the Commission should direct the utilities to adopt this disaggregated forecast for their bundled load forecasts in Track II.

AReM also notes that the OIR is silent on whether utilities will be allowed to develop their own load forecasts (for both “system” and “bundled” load) or use those developed by the CEC in the 2009 IEPR. In the past, the Commission has directed the utilities to use the IEPR results.⁶ AReM urges the Commission to issue a similar directive here to ensure that there is one consistent

³ PG&E General Rate Case, Phase I, A.09-12-020, workpapers supporting PG&E-8, pps. WP-3 and WP-5.

⁴ California Public Resources Code 25302.5 (b) requires the CEC to include a forecast of direct access load in each IEPR.

⁵ 2009 *Integrated Energy Policy Report, Final Committee Report*, California Energy Commission, December 2009, p. 50.

⁶ D.07-12-052, Finding of Fact 12, p. 272.

set of load forecast assumptions used through the proceeding, and to ensure that time is not spent arguing about utility-specific contingencies that have already been addressed in the IEPR forecasts.

II. INCLUDE IN TRACK III A KEY UNRESOLVED ISSUE FROM PHASE II OF R.08-07-002 -- DISTINGUISHING “SYSTEM” VERSUS “BUNDLED” RESOURCE NEEDS FOR ALLOCATING COSTS OF NEW GENERATION

R.08-02-007 had included several issues within scope of a planned Phase II, but, as noted in the OIR “[n]o activity was taken on Phase II” in that proceeding.⁷ An issue from Phase II of R.08-02-007 of critical concern to both direct access customers and electric service providers (“ESPs”) was the following:

- Consider whether and to what extent refinements to policies distinguishing system versus bundled resource needs, including a methodology that allocates the cost of new generation to system and bundled customers.⁸

The Commission noted in R.08-02-007 that this issue was being included to address “gaps” in the Commissions’ rules identified in D.07-12-052⁹ regarding “the extent to which utilities can elect the cost allocation mechanism (‘CAM’) for new generation.”¹⁰ The Commission further clarified, as follows:

In other words, energy service provider (ESP) load may grow at a different rate than bundled load and **there should not be a cross-subsidy between the two.**” (emphasis added)¹¹

Specifically, the Commission must evaluate the characteristics of the load served by the utilities versus the characteristics of the load served by the ESPs to determine the different rates at which they grow. The results of that analysis will determine cost causation for new generation and,

⁷ OIR, p. 7.

⁸ R.08-02-007, p. 11.

⁹ See discussion in D.07-12-052, pp. 116-120.

¹⁰ R.08-02-007, Attachment A, p. A-27.

¹¹ *Ibid.*

therefore, provide the foundation needed for a rational and non-discriminatory allocation of those costs.

The Commission should delay no longer and move quickly to resolve this long-standing issue.¹² Accordingly, AReM requests the Commission to specifically include this issue for resolution in Track III.

III. INCLUDE CONSIDERATION OF MODIFICATIONS TO THE LTPP RULES TO (A) DETERMINE WHEN CUSTOMERS “BENEFIT” AND ARE SUBJECT TO THE CAM AND (B) ADDRESS CAM IMPROVEMENTS AND CAM OPT-OUT AS DIRECTED IN PHASE 2 OF R.05-12-013

The OIR states that the Commission will consider modifications to the LTPP rules needed to comply with SB 695 “or to otherwise address refinements to the CAM process.”¹³ AReM urges the Commission to use this opportunity to make significant improvements to the CAM process, which distorts the market and impairs retail competition.¹⁴

First, SB 695 requires that the Commission make a determination that the designated procurement “benefits all customers” in a utility’s service area before the Commission may authorize a utility to employ the CAM.¹⁵ As opposed to utility claims to the contrary, this limits the application of the CAM. For example, the CAM would not apply for procurement needed to meet the future needs of utility bundled customers pursuant to Public Utilities Code 454.5. In addition, the CAM would not apply if the procurement is to meet specific local needs that do not benefit “all customers.” Accordingly, the Commission should include determination of clear guidelines

¹² AReM initially raised this concern as far back as Rulemaking 04-04-003 and later filed testimony on this issue in Rulemaking 06-02-013. See, *Comments of the Alliance for Retail Energy Markets on the Assigned Commissioner’s Ruling Regarding Next Steps in Procurement Proceeding*, R.04-04-003, December 12, 2005, p. 7 and *Testimony on Behalf of the Alliance for Retail Energy Markets*, R.06-02-013, March 2, 2007.

¹³ OIR, Issue 1, Track III, p. 15.

¹⁴ AReM disagrees with the statement in the OIR that SB 695 “eliminates the CAM election process.” (p. 14) While SB 695 made the energy auction voluntary, it did not address the election required in D.06-07-029. Similarly, SB 695 contains no language that would obligate an IOU to use the CAM.

¹⁵ Public Utilities Code, §365.1(c)(2)(A).

specifying under what conditions the CAM will apply to future utility procurement in Track III of this proceeding.

Second, the Track 2 Resource Adequacy (“RA”) decision in R.05 -12-013 approved on June 3, 2010, (a) adopts improvements to the CAM process; and (b) defers a decision on the ability of a load-serving entity (“LSE”) to opt out of the CAM,¹⁶ an issue that has been awaiting resolution since 2006.¹⁷ As highlighted in the proposed Track 2 RA decision, this LTPP proceeding is the logical place to consider these two issues.¹⁸

For these reasons, AReM urges the Commission to include the following topics under Issue 1 in Track III: (1) adopting clear guidelines specifying when utility procurement is or is not subject to the CAM based on whether or not there is benefit to “all customers;” (2) considering improvements to the CAM process; and (3) adopting a process to implement the CAM Opt-Out.

IV. RESOLVE REFINEMENTS TO TIMELINES FOR UTILITIES’ SALES OF EXCESS RA PRODUCTS FOR 2011 COMPLIANCE

AReM appreciates and strongly supports the OIR’s inclusion of Issue 6, Track 3, regarding refinements to timelines of the utilities’ Requests For Offers (“RFOs”) for sales of excess RA. AReM has frequently raised this concern, noting significant difficulty in obtaining Local RA capacity, particularly in Local Areas in which the utilities own or control the vast majority of available capacity. In particular, AReM supports the OIR’s insistence that the utilities must offer excess RA to the market, allowing sufficient time for other LSEs to buy to meet their own RA obligations.¹⁹ Additionally, while the utilities may have made RA available, they have insisted on overly complex and burdensome price, terms and conditions, since they are in a monopoly seller position. The Commission needs to address the utilities’ asymmetrical negotiating position and

¹⁶ R.05-12-013, Track 2, Proposed Decision, Revision 4, Redline, p. 82.

¹⁷ R.05-12-013, Track 2, Proposed Decision, Revision 4, Redline, p. 79.

¹⁸ R.05-12-013, Track 2, Proposed Decision, Revision 4, Redline p. 83.

¹⁹ OIR, p. 16.

direct the utilities to offer their excess RA within commercially-reasonable price, terms and conditions. This will result in increasing availability of Local RA capacity, which would significantly improve market liquidity. AReM urges that this issue be targeted for a decision no later than September 2010 to be useful for 2011 RA compliance. AReM members stand ready to assist in this effort.

V. CONSIDER OPTIONS FOR LONG -TERM REDUCTION IN LOCAL CAPACITY REQUIREMENTS

The OIR notes that Track 1 of the LTPP will, in part, identify needs for Local RA in the 2011-2020 planning horizon, including transmission scenarios.²⁰ The Commission states its intent to work cooperatively with the California Independent System Operator (“CAISO”), who would be responsible for such a study. Given that the trend since the inception of the LSE local requirements has been steadily upward, and that the number of deficient local areas, in which the LCR exceeds existing generation, has more than doubled,²¹ a concerted review of local area requirements, supply side resources, and transmission in these regions is warranted.

VI. CONCLUSION

As described in more detail above, AReM respectfully requests that the Commission make the following clarifications or address the following issues in R.10-05-006:

- Direct the utilities to exclude from their bundled load the forecast of direct access load over the LTPP time horizon to ensure that the utilities do not over-procure to meet inflated power needs and then seek stranded costs for their over-procurement.

²⁰ OIR, pp. 12-13.

²¹ *Comments of the Alliance for Retail Energy Markets on Proposed 2011 Local Capacity Requirements*, May 10, 2009, R.09-10-032, p. 2.

- Direct the utilities to use the load forecasts developed by the CEC in the 2009 IEPR.
- Consider the unresolved Phase II issue from R.08 -02-007 of whether and to what extent refinements to policies distinguishing system versus bundled resource needs, including a methodology that allocates the cost of new generation between system and bundled customers.
- Address the following refinements to the CAM process: (1) adopting clear guidelines specifying when utility procurement is not subject to the CAM because “all customers” do not benefit; (2) considering improvements to the CAM process, as directed in the Track 2 RA decision approved June 3, 2010; and (3) adopting a process to implement the CAM Opt-Out.
- Adopt refinements to timelines of the utilities’ RFOs for sales of excess RA to other LSEs by September 2010 in time for 2011 RA compliance.
- Include in Track I consideration of options to reduce Local Capacity Requirements over the long term.

Respectfully submitted,

/s/ Sue Mara

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Consultant to
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June 4, 2010

VERIFICATION

I, Susan J. Mara, am a consultant to the Alliance for Retail Energy Markets (“AReM”) and I am authorized to make this Verification on AReM’s behalf. The statements in the foregoing “Comments of the Alliance for Retail Markets on Preliminary Scoping Memo,” filed in R.10 -05-006, are true to my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and executed on June 4, 2010 at Redwood City, California.

/s/ Susan J. Mara _____
SUSAN J. MARA

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *Comments of the Alliance for Retail Energy Markets on the Preliminary Scoping Memo* on all parties of record in *R.10-05-006* and *R.08-02-007* by serving an electronic copy on their email addresses of record and, for those parties without an email address of record, by mailing a properly addressed copy by first-class mail with postage prepaid to each party on the Commission's official service list for this proceeding.

This Certificate of Service is executed on June 4, 2010 at Redwood City, California.

/s/ Susan J. Mara _____
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