

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

Order Instituting Rulemaking to Oversee the	}	
Resource Adequacy Program, Consider	}	Rulemaking 11-10-23
Program Refinements, and Establish Annual	}	(Filed October 20, 2011)
Local Procurement Obligations	}	

**COMMENTS OF NRG ENERGY, INC. ON  
PRELIMINARY MATTERS RELATED TO THE SCOPE, SCHEDULE  
AND ADMINISTRATION OF THIS PROCEEDING**

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November 7, 2011

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

Order Instituting Rulemaking to Oversee the	}	
Resource Adequacy Program, Consider	}	Rulemaking 11-10-023
Program Refinements, and Establish Annual	}	(Filed October 20, 2011)
Local Procurement Obligations	}	

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PRELIMINARY MATTERS RELATED TO THE SCOPE, SCHEDULE  
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In accordance with the Order Instituting Rulemaking (“OIR”), issued October 20, 2011 in the above-captioned proceeding, NRG Energy, Inc. (“NRG”) respectfully submits these comments on preliminary matters related to the scope, schedule and administration of this proceeding, which is considering refinements to the Commission’s Resource Adequacy (“RA”) program.

**I. Comments**

**A. Comments on Scope**

In the OIR, Energy Division identifies ten candidate issues and topics:<sup>1</sup>

1. Establishing local capacity requirements (LCR) for 2013 and 2014.
2. Adopting the California Independent System Operator Corporation’s (“CAISO’s”) RA Standard Capacity Product (“SCP”) and applying the SCP rules to all resources that count towards meeting RA requirements.
3. Re-examining the existing Maximum Cumulative Capability (“MCC”) buckets and creating a new MCC bucket for demand response resources.

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<sup>1</sup> OIR, Appendix A.

4. Adjustments to the coincidence adjustment.
5. Reviewing a CAISO proposal to incorporate operational characteristics into RA procurement requirements.
6. Considering modifying the system peak demand definition to exclude weekends and holidays from the hours used to calculate the qualifying capacity of combined heat and power resources.
7. Establishing qualifying capacity rules for resources that are dynamically scheduled or connected to the CAISO controlled grid via pseudo-tie arrangements.
8. Modifying qualifying capacity and deliverability rules regarding resources connected at the distribution level.
9. Updating RA rules to account for differences in procurement driven by the 33% Renewable Portfolio Standard implemented by SB 2 1X.
10. Updating RA rules for resources that provide “flexible grid attributes”, such as energy storage devices.

In general, NRG supports this list of issues. In particular, NRG strongly supports consideration of the following issues, which would greatly improve the existing RA program:

- Issue 2 – Adopting the CAISO’s SCP and applying the SCP rules to all resources that provide RA capacity, including demand response resources. The Federal Energy Regulatory Commission directed the CAISO to work expeditiously towards applying its SCP rules to all resources that count towards meeting RA requirements in an order issued on June 26, 2009.<sup>2</sup> Yet, to date, no work towards applying SCP rules to demand response resources has even begun.
- Issue 8 – Modifying RA qualifying capacity and deliverability rules to allow resources connected at the distribution level to qualify under the RA

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<sup>2</sup> *California Independent System Operator Corp.*, 127 FERC ¶ 61,298 (2009) at P 58.

program. Governor Brown has issued an aggressive call for 12,000 MW of new distributed renewable generation resources. It is imperative that these resources be integrated into the RA program on a fully consistent basis.

- Issue 9 – Updating RA rules to account for differences in procurement driven by the 33% Renewable Portfolio Standard implemented by SB 21X. The continued success of the CPUC’s RA program in supporting reliability will depend on having rules that effectively incorporate increasing amounts of renewable generation into that program.
- Issue 10 – Updating RA rules for resources that provide “flexible grid attributes”, such as energy storage devices. Again, the future success of the RA program in supporting reliability will hinge on how carefully new technologies that emerge from the application of more stringent carbon constraints are incorporated into that program.

**B. The Commission Should Include Updating the Waiver Trigger Price in its Scope.**

NRG strongly urges the Commission to include an additional issue in the scope of this proceeding – the re-examination of the very stale \$40/kW-year waiver trigger price. The waiver trigger price has not been updated since its inception, now more than five years ago. This artificially low price represents a significant impediment to an efficient and effective RA market and will harm efforts by the CAISO to retain units needed for long-term system reliability unless it is updated to reflect the actual costs of bringing new generation to market.

**i. Prior justifications for not examining the trigger price are not sufficient.**

Decision (“D.”) 11-06-022 declined to revisit the waiver trigger price, primarily on the basis that the median price paid for RA capacity as reported in the 2010 Energy Division RA Report was well below the waiver trigger price level of \$40/kW-year.<sup>3</sup> There are a number of flaws in this reasoning that should not be repeated in the instant proceeding.

*First*, the data set relied on to establish the median price of RA contracts in 2010 tells only a part of the story, and does not – as some have advocated – suggest that there is no need to update the price. The amount of capacity represented in the survey was only 11,983 MW, or just 23 percent of the total 51,817 MW CPUC RA capacity requirement for August 2010, the month for which the RA contract price data was reported. Thus, the reported data represents only a small portion of the total universe of RA contracts. Further, the reported data lacks geographic diversity. As the 2010 RA Report observed, only four of the twelve Energy Service Providers provided RA contract data for the price survey. Because of the significantly flawed sample size, the Commission should not attempt to draw any reliable conclusions about overall RA contract prices from this incomplete sample.

*Second*, because the contracts sampled included both local *and* system RA service, the data sample cannot be relied on to assess the cost of meeting *local* capacity requirements. In fact, the price data cited in the survey included generating units located in local capacity areas, but contracted to provide system RA service. The difference in

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<sup>3</sup> D.11-06-022 at 34-35.

value is (rightfully) substantial, and basing a decision on the waiver trigger for local RA service based on system RA capacity prices is nonsensical.

*Third*, the Commission should not base any conclusions about the need to revisit the waiver trigger price from existing contract price data. The existing \$40/kW-year waiver price trigger acts as a soft cap and may well have artificially decreased the price of existing RA contracts. Drawing conclusions about the reasonableness of the \$40/kW-year waiver trigger from RA contracts implemented with that trigger in place completes an imperfect but self-perpetuating loop which new, relevant facts cannot penetrate. This is not rational regulation.

*Finally*, the contract prices analyzed in the 2010 RA Report do not include any costs for complying with California's Greenhouse Gas regulations, which are poised to take effect in 2013.

In sum, the data set relied on in D.11-06-022 to reject reconsideration of the waiver trigger is too limited, includes price data irrelevant to assessing the reasonableness of the current waiver trigger for *local capacity requirements*, includes data taken from a period in which the waiver trigger price influenced contract pricing, and does not include GHG compliance costs. No conclusion regarding the reasonableness of the \$40/kW-year waiver trigger should be drawn from this data.

**ii. The existing waiver trigger level is wrong, as this Commission, the California Energy Commission, FERC and the CAISO have all recognized.**

Perhaps the best reason to reconsider the waiver trigger level is that it is wrong – that it completely fails to reflect the cost of new capacity. A host of data sources, including this Commission's own findings, have consistently demonstrated that the cost

of bringing new resources into the California market dwarfs the level of the waiver trigger.

Every entity that has examined the cost of bringing new capacity into California has reached a similar conclusion:

- The California Energy Commission (“CEC”) estimates that the gross annual levelized cost of bringing a new peaking resource (typically the least expensive type of new resource on an absolute basis, and the kind of resource likely to be added to assist in meeting renewable integration needs) on-line ranges from \$232/kW-year to \$353/kW-year.<sup>4</sup> The CAISO energy and ancillary service markets produce nothing like the kind of revenue that would be needed to reduce these gross costs of new capacity to \$40/kW-year. This Commission should consider the data provided by its sister agency in re-evaluating the need for a waiver trigger.
- The CAISO recently proposed a new price of \$55/kW-year for its capacity procurement mechanism (“CPM”), which was intended to represent only the *going forward* costs<sup>5</sup> of resources in California. The CPM is the authority by which the CAISO procures capacity when the RA program does not provide capacity sufficient to meet the CAISO’s operational needs.<sup>6</sup> The idea that the net annualized cost of bringing a new capacity

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<sup>4</sup> *Comparative Costs of California Central Station Electricity Generation* (available at <http://www.energy.ca.gov/2009publications/CEC-200-2009-017/CEC-200-2009-017-SD.PDF>) at Table 1.

<sup>5</sup> The going forward costs of a resource do not include any return on or of capital, but only include fixed operating and maintenance costs, ad valorem costs, and general and administrative costs. See Update to Capacity Procurement Mechanism and Exceptional Dispatch, submitted to the Federal Energy Regulatory Commission on December 1, 2010 in Docket No. ER11-2256, at FN 9 (available at [http://www.aiso.com/Documents/December1\\_2010Amendment-tariff-ModifyCapacityProcurementMechanisminDocketNo\\_ER11-2256-000.pdf](http://www.aiso.com/Documents/December1_2010Amendment-tariff-ModifyCapacityProcurementMechanisminDocketNo_ER11-2256-000.pdf)) (“CPM Amendment”).

<sup>6</sup> See CPM Amendment at 4. Settlement proceedings related to this price are ongoing.

resource on-line in California (which is what the waiver trigger was designed to represent) would remain substantially lower than the going forward-only cost of the same resource assumed by the CAISO illustrates how obsolete the \$40/kW-year waiver trigger has become. The CAISO's CPM price is a relevant data point for waiver trigger pricing, as the original \$40/kW-year waiver trigger price was derived from a price for a predecessor CAISO capacity backstop mechanism, the Reliability Capacity Services Tariff ("RCST").<sup>7</sup>

- The Federal Energy Regulatory Commission (FERC) allowed the CAISO's \$55/kW-year price to take effect, subject to refund.<sup>8</sup> However, in setting the level of the price for technical conference, FERC also noted that the \$55/kW-year price may create the potential for distorted price signals and deny resources a reasonable opportunity to recover fixed costs.<sup>9</sup> In light of these actions, it is reasonable to assume that the \$55/kW-year CPM price represents the low end of a range of capacity prices that FERC may have found reasonable.
- The independent CAISO Department of Market Monitoring ("DMM") has also recognized that the net cost of new capacity in California greatly exceeds the \$40/kW-year waiver trigger figure. According to DMM analysis from 2010, the net cost of new capacity (the cost minus expected energy and ancillary service revenues) for a new combined cycle unit is

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<sup>7</sup> See Decision D.06-06-064 at 67-68.

<sup>8</sup> California Independent System Operator Corporation, 134 FERC ¶ 61,211(2011) ("CPM Order") at P 2.

<sup>9</sup> CPM Order at P 55.



\$160.10/kW-year for NP15 and \$155.18/kW-year for SP15.<sup>10</sup> Similarly, DMM's estimated net cost of a new combustion turbine is \$168.16/kW-year and \$148.38/kW-year.<sup>11</sup> These net cost of new capacity numbers are several times the waiver trigger's \$40/kW-year net cost of new capacity.

- As IEP has noted, the costs of the Commission-approved Southern California Edison peaking units were \$150/kW-year.<sup>12</sup> The Commission is required to take into account its own approval of these projects as illustrative of the correct price of capacity in California.

Given the Commission's diligence in reconsidering and updating other aspects of the RA program, which was implemented in 2006, it is bewildering as to why the Commission refuses to reconsider and update this very stale and outdated aspect of the RA program, which was adopted the same year the RA program was implemented. NRG respectfully requests that the Commission include revisiting the outdated \$40/kW-year waiver trigger price in the instant rulemaking.

### **C. Schedule**

The ten items proposed by Energy Division, plus the additional items requested by NRG, are a formidable list of issues to deal with. The OIR indicates that the instant proceeding will include a Phase 1, with a target date for a decision by June 2012, and a Phase 2, with a target date for a decision by June 2013. NRG assumes that any aspects of the RA program modified by a Phase 1 decision would be in effect for the 2013 RA

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<sup>10</sup> See 2010 Market Issues and Performance Annual Report, Tables 2.7 and 2.8 ("CAISO 2010 Market Report") (available at <http://www.caiso.com/Documents/2010%20Annual%20report%20on%20market%20issues%20and%20performance/2010AnnualReportonMarketIssuesandPerformance.pdf>).

<sup>11</sup> See CAISO 2010 Market Report at Tables 2.9 and 2.10.

<sup>12</sup> *Comments of the Independent Energy Producers Association On the Proposed Decision*, submitted June 13, 2011 in Rulemaking R.09-10-032 at 2.

compliance year, and any aspects of the RA program modified by a Phase 2 decision would be in effect for the 2014 RA compliance year.

NRG suggests that the following issues be resolved in Phase 1:

1. Establishing local capacity requirements (“LCR”) for 2013 and 2014.
2. Adopting the California Independent System Operator Corporation’s (“CAISO’s”) RA Standard Capacity Product (“SCP”) and apply the SCP rules to all resources that count towards meeting RA requirements.
3. Re-examining the existing Maximum Cumulative Capability (“MCC”) buckets and creating a new MCC bucket for demand response resources.
4. Adjustments to the coincidence adjustment.
5. Considering modifying the system peak demand definition to exclude weekends and holidays from the hours used to calculate the qualifying capacity of combined heat and power resources.
6. Establishing qualifying capacity rules for resources that are dynamically scheduled or connected to the CAISO controlled grid via pseudo-tie arrangements.
7. Reconsideration of the \$40/kW-year waiver trigger.

These issues should be resolved in Phase 1 because they are either timely (especially the application of SCP rules to all RA resources, which is long overdue) or focused enough for expedited resolution.

NRG suggests that the following issues be resolved in Phase 2:

1. Reviewing a CAISO proposal to incorporate operational characteristics into RA procurement requirements.
2. Modifying qualifying capacity and deliverability rules regarding resources connected at the distribution level.
3. Updating RA rules to account for differences in procurement driven by the 33% Renewable Portfolio Standard implemented by SB 2 1X.
4. Updating RA rules for resources that provide “flexible grid attributes”, such as energy storage devices.

While NRG recommends that these four issues be resolved in the timelines proposed for Phase 2, NRG is *not* advocating that any consideration of these four issues be deferred until after Phase 1. These four issues are complex and related to other processes recently initiated and currently in progress (e.g., R.10-12-007, R.11-09-011, R.10-05-006 and the CAISO's ongoing analysis of operational needs as part of that proceeding). Consideration of these matters should begin promptly, as NRG anticipates the discussions of these matters will take some time.

## **II. Conclusion**

NRG respectfully requests that the Commission take these comments into account and take action as requested herein.

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