

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

Order Instituting Rulemaking to Oversee the
Resource Adequacy Program, Consider
Program Refinements, and Establish Annual
Local Procurement Obligations.

R.11-10-023
(Filed October 20, 2011)

**REPLY OF THE ALLIANCE FOR RETAIL ENERGY MARKETS
TO COMMENTS ON SCOPE, SCHEDULE, AND ADMINISTRATION OF
ORDER INSTITUTING RULEMAKING**

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Date: November 21, 2011

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The Alliance for Retail Energy Markets (“AReM”) ¹ submits these reply comments in accordance with the *Order Instituting Rulemaking* (“OIR”) issued on October 27, 2011 . The OIR set this date for reply to comments submitted November 7, 2011 on the proposed scope , schedule, and administration for the proceeding and recommended priorities with respect to appropriate refinements to the Resource Adequacy (“RA”) program and local capacity requirements (“LCR”) beginning with the 2013 compliance year . AReM replies to issues raised in the comments of Southern California Edison (“SCE”), the Independent Energy Producers Association (“IEP”), NRG Energy, Inc. and Calpine Corporation. AReM represents Electric Service Providers (“ESPs”), and each of its members is a respondent to this proceeding and a load-serving entity (“LSE”).

I. ADDRESS THE COINCIDENT ADJUSTMENT FACTOR IN PHASE 1.

The OIR includes further consideration of AReM’s proposal to modify the coincident adjustment factor within the scope of this proceeding. ² In its November 7th comments, AReM

¹ 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.

² See OIR, Appendix A, Issue # 4, page 1.

strongly supported including this topic within scope and urged that AReM's proposal be considered and adopted in Phase 1.³ Southern California Edison ("SCE") argues that revisions to the coincident adjustment factor are unneeded, but to the extent the Commission intends to address the topic, it should be addressed in Phase 2.⁴ AReM strongly disagrees.

For background, AReM submitted a successful motion in the previous RA rulemaking (R.09-10-032) to add this issue to scope.⁵ That motion described the inequitable cost shifting from bundled customers to direct access customers that occurs by applying the existing coincident adjustment factor – a calculation method that has been in effect since 2006 when RA requirements were first implemented pursuant to Decision ("D.") 05-10-042.⁶ For nearly 6 years, direct access customers have been allocated and paying for excessive RA capacity requirements. Now is the time to correct this inequity.

Significantly, D.11-06-022, which addressed AReM's proposal in R.09-10-032, found significant merit, directed additional technical analysis by the Energy Division and the California Energy Commission, and specifically directed "further consideration and **possible implementation** in 2013." (Emphasis added.)⁷ Therefore, SCE's recommendation to remove or defer consideration of this issue directly conflicts with the Commission's directive in D.11-06-022 and should be rejected. Instead, the Commission should follow through on its commitment in D.11-06-02 to consider and adopt AReM's proposal in Phase 1 of R.11-10-023 and order its implementation as soon as possible.

³ AReM Comments, November 7, 2011, p. 2.

⁴ SCE Comments, November 7, 2011, p. 7.

⁵ See, *Motion of the Alliance for Retail Energy Markets to Add Issue to Phase 2 Scope*, R.09-10-032, November 30, 2010.

⁶ D.05-10-042, pp. 36-37.

⁷ D.11-06-022, pp. 15-17.

II. INCREASES IN THE WAIVER TRIGGER PRICE MAY BE CONSIDERED WITHIN THE SCOPE OF THIS PROCEEDING AS LONG AS THE COMMISSION WILL ALSO REQUIRE IMPROVEMENTS TO THE UTILITIES' PRACTICES FOR SALES OF EXCESS LOCAL RA CAPACITY TO OTHERS.

The Independent Energy Producers Association (“IEP”)⁸ and NRG Energy, Inc.⁹ propose adding to the scope of this proceeding consideration of the waiver trigger price, which is an element of an LSE’s request for a waiver from its Local RA requirements. AReM would support re-consideration of the waiver trigger price on one condition – that the Commission also includes within the scope of this proceeding consideration of improved practices by the investor-owned utilities (“IOUs”) for sales of Local RA capacity to ESPs, as requested in AReM’s November 7th comments.¹⁰ As AReM explained therein, the IOUs own or control most of the Local RA capacity and the IOUs are often the supplier of last resort for the ESPs,¹¹ which raises concerns about the potential for exercise of market power by the IOUs.

In fact, the Commission addressed market power concerns in R.05-12-013 when it implemented the Local RA requirements for LSEs. In the resulting decision, D.06-06-064, the Commission stated that: “market power is an inherent factor affecting the Local RAR program”¹² and, among other actions, adopted the waiver trigger price as a market power mitigation measure:

We find that a waiver process is necessary as a market power mitigation measure, and should therefore be adopted as a component of the Local RAR program.¹³

⁸ IEP Comments, November 7, 2011, pp. 3-5.

⁹ NRG Comments, November 7, 2011, pp. 4-9.

¹⁰ AReM Comments, November 7, 2011, p. 7.

¹¹ AReM Comments, November 7, 2011, p. 7.

¹² D.06-06-064, p. 69.

¹³ D.06-06-064, p. 71.

In that same proceeding, AReM also raised the issue of sales of excess Local RA to ESPs. In D.06-06-064, the Commission encouraged the IOUs to consider “least cost/best fit” and sell their excess to other LSEs.¹⁴

Because the IOUs own and control much of the available RA, they are often the last resort supplier of Local RA capacity to the ESPs. If the waiver trigger price is increased, it is even more necessary for the Commission to address the IOUs’ practices with respect to when and how they make their excess capacity available to other LSEs and ensure that the IOUs employ non-discriminatory and timely practices for such sales of Local RA capacity. AReM reiterates its request that the Commission add to the scope of Phase 1 of this proceeding consideration of IOUs’ practices for sales of excess Local RA. In that event, AReM would be willing to consider changes to the current waiver trigger price concurrently.

III.A MULTI -YEAR RA PROCUREMENT OBLIGATION SHOULD NOT BE CONSIDERED UNLESS THE COMMISSION IS PREPARED TO CONSIDER A CENTRALIZED CAPACITY MARKET AT THE SAME TIME.

IEP¹⁵ and Calpine Corporation¹⁶ reintroduce the concept of a multi -year RA procurement requirement for LSEs and request that this topic be added to the scope of this proceeding. IEP explains that an obligation of that nature might provide “advantages” to the LSEs¹⁷ and Calpine argues that a multi -year procurement obligation is needed to ensure that reliability resources are retained.¹⁸ Indeed, this topic has been debated extensively in California, most recently in Track 2 of R.05-12-013, and AReM reiterates the concerns it previously expressed in that proceeding:

¹⁴ D.06-06-064, p. 65.

¹⁵ IEP Comments, November 7, 2011, pp. 5-6.

¹⁶ Calpine Comments, November 7, 2011, pp. 2-4.

¹⁷ IEP Comments, November 7, 2011, p. 5.

¹⁸ Calpine Comments, November 7, 2011, p. 2.

An approach that imposes a multi -year forward RA obligation with no viable underlying market structure to manage the risks associated with those obligations is untenable.¹⁹

In that proceeding, AReM specifically opposed the initial Proposed Decision,²⁰ which would have adopted a multi -year forward RA procurement obligation, arguing that it would cause significant harm to the competitive retail market.²¹ In particular, AReM recommended the following:

If the Commission adopts a multi -year forward obligation, it must also adopt a centralized capacity market as the only reasonable mechanism to ensure the proper market -based tools are implemented to allow all load -serving entities, including electric service providers, to comply with the requirements in a neutral and cost-effective manner[.]²²

Neither IEP nor Calpine mention this linkage between a multi -year RA procurement obligation and a centralized capacity market (“CCM”).

In addition, this necessity of linking a multi-year forward RA requirement with establishing a centralized capacity market is supported by another Commission decision, which established the cost allocation mechanism (“CAM”) for the IOUs. Specifically, D.06 -07-029 directed that multi-year RA obligations would be considered in conjunction with capacity markets as well as with a LSE’s ability to opt-out of the CAM:

In Phase II of R.05-12-013, we will consider proposals for how an opt -out system can be designed and implemented, **concurrent with our consideration of multi-year resource adequacy and capacity markets**. ... That proceeding will examine **creating multi-year RA requirements for all LSEs as well as capacity markets** and other arrangements for assuring that sufficient generation is built when and where it is needed. (Emphasis added.)²³

¹⁹ *Comments of the Alliance for Retail Energy Markets on the Proposed Decision of Administrative Law Judge Mark S. Wetzell*, R.05-12-013, December 2, 2009, p. 2.

²⁰ ALJ Wetzell’s initial proposed decision in R.05-12-013 was issued November 9, 2009.

²¹ AReM December 2, 2009 Comments, *loc. cit.*, pp. 2-6.

²² AReM December 2, 2009 Comments, *loc. cit.*, Recommended Changes to Proposed Decision.

²³ D.06-07-029, pp. 4-5.

If the multi-year obligation is to be added to the scope of this proceeding, CCMs -- and LSE Opt-Out -- must be included as well, pursuant to the Commission's direction in D.06 -07-029.

Further, while Calpine quotes from the final Track 2 decision in R.05 -12-013 in support of its position,²⁴ it neglects to reference the key determining section:

[W]e conclude that a multi-year forward procurement obligation should not be adopted at this time. We direct our staff to review this issue and report its findings to us as the basis for possible future action.²⁵

AReM is unaware of any staff reports issued on this topic since D.10-06-018 was approved.

In summary, AReM objects to the inclusion of further evaluation of a multi-year RA procurement obligation to the scope of this proceeding, unless and until the Commission is prepared to consider CCMs and the LSE Opt-Out concurrently.

IV. CONCLUSION

AReM appreciates the opportunity to submit this reply to comments submitted by parties regarding the scope of R.11 -10-023. AReM respectfully requests that the Commission consider and adopt AReM's proposals recommended herein.

²⁴ Calpine Comments, November 7, 2011, pp. 3-4.

²⁵ D.10-06-018, p. 2.

Respectfully submitted,

A handwritten signature in cursive script that reads "Susan J. Mara".

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