

**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.

Rulemaking 11-10-023
(October 20, 2011)

**RESPONSE OF THE INDEPENDENT ENERGY PRODUCERS
ASSOCIATION TO MOTION FOR AUGMENTATION**

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In a motion filed on January 13, 2012, NRG Energy, Inc. (NRG) asked the Commission to augment the Scoping Memo and Ruling for this proceeding to include consideration of the level of the waiver trigger for procurement of local Resource Adequacy (RA) capacity or, alternatively, to explain why the Commission rejected the recommendations of NRG, the Independent Energy Producers Association (IEP), and the Western Power Trading Forum to revisit the waiver trigger level.

IEP supports NRG's request and urges the Commission to examine both the level of the waiver trigger and more broadly how effectively the waiver trigger has performed since it was first adopted in 2006. Reconsideration of the level of the waiver trigger is particularly appropriate now because of the imminent approval by the Federal Energy Regulatory Commission of the Offer of Settlement related to the Capacity Procurement Mechanism (CPM) filed by the California Independent System Operator (CAISO). As NRG points out in its motion, the existing discrepancy between the waiver trigger level of \$40/kW-yr and the CPM payment of \$55/kW-yr will grow even greater as the CPM payment increases to \$67.50/kW-yr when the

Settlement is approved and to \$70.88/kW-yr two years later, creating a corresponding gap in what should be a smooth price curve for capacity that is needed for reliability purposes.

In addition to revisiting the level of the waiver trigger, the Commission should take this opportunity to consider the purpose of the waiver trigger and to examine whether the waiver trigger has functioned effectively in its original conception as a mechanism to counter the exercise of market power. Decision (D.) 06-06-064, where the waiver trigger was first adopted, explained that a waiver, if granted, excuses only the penalties associated with the failure of a load-serving entity (LSE) to procure its allocated amount of local RA capacity, and the LSE would bear the cost of any backup procurement. Thus, an LSE that cannot obtain enough RA capacity at \$40 or less will face a decision between (i) seeking a waiver and potentially avoiding penalties while bearing the cost of backup capacity procured by the CAISO, or (ii) procuring local RA capacity itself at a price higher than \$40, if available. Based on the limited public information about the waivers that have been requested and granted so far, *i.e.*, that waivers have been sought only twice and granted only once, it appears that LSEs who confront this choice are generally choosing the latter option. If so, it is unclear what purpose the waiver trigger serves. On the other hand, the waiver trigger may be creating impediments to market operations unnecessarily.

At this point, IEP questions whether the waiver trigger is the most effective way of combatting potential market power, the reason it was adopted in the first place. To IEP, the waiver trigger complicates what should be relatively straightforward procurement decisions without resulting in any actions that reduce market power within the local reliability areas. It might be more effective for Energy Division to investigate individually any allegations of market power and to recommend appropriate steps to counter the exercise of market power when it is

confirmed. This approach would focus on the problem—market power—the waiver trigger was created to address. This approach would also make the waiver trigger unnecessary and would eliminate a key irregularity in the market for local RA capacity.

For these reasons, the Independent Energy Producers Association respectfully urges the Commission to grant NRG's motion and to augment the Scoping Memo and Ruling to include a consideration of the level and effectiveness of the local RA waiver trigger.

Respectfully submitted this 30th day of January, 2012 at San Francisco, California

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