

**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)

**MOTION OF NRG ENERGY, INC. FOR AUGMENTATION OF  
THE SCOPING MEMO AND RULING**

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Dated: January 13, 2012

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The Order instituting this rulemaking invited parties to submit comments addressing, among other things, recommendations on issues to be considered in this proceeding.<sup>1</sup> In response to that invitation, NRG Energy, Inc. (“NRG” or the “NRG Companies”) offered recommendations that included a reconsideration of the level of the Local Resource Adequacy (“RA”) waiver trigger adopted in Decision (“D.”) 06-06-064 over five years ago and not updated since then. In its comments, NRG provided a detailed explanation of why a reconsideration of the waiver trigger was overdue. Other parties, including the Independent Energy Producers Association and the Western Power Trading Forum, also recommended a reconsideration of the waiver trigger level.

Despite these recommendations, the Phase I Scoping Memo and Ruling issued on December 27 made no mention of the waiver trigger issue. The Scoping Memo’s silence leaves NRG and other parties uncertain about whether these recommendations were overlooked, assumed to be included in other issues, or intentionally rejected for unstated, and thus unknown, reasons.

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<sup>1</sup> Order, p. 6.

In hopes of eliminating this uncertainty, NRG moves under Rule 11.1 of the Commission's Rules of Practice and Procedure for augmentation of the Scoping Memo and Ruling. The augmentation should include an express consideration of the waiver trigger level and either (1) a determination that the level of the waiver trigger is an issue to be taken up in Phase 1 (as NRG and others recommend) or (2) a complete explanation of why the issue will again be deferred for at least another year. Fundamental principles of administrative law require an agency to explain to the public the reasons for its determinations and not to act arbitrarily. A failure to explain the reasons for the Commission's determination leaves the public with no understanding of why the Commission took the actions it did or why it accepted the recommendations of some parties but ignored the recommendations of others.

NRG continues to urge the Commission to include the issue of the level of the waiver trigger within the scope of Phase 1 of this proceeding. The impending approval of the Capacity Procurement Mechanism ("CPM") by the Federal Energy Regulatory Commission will create a situation in which a load-serving entity could seek and receive a waiver of its Local RA obligation because the only eligible capacity was available at a price of, *e.g.*, \$42/kW-yr. The system's physical need for local capacity to maintain reliability is not waived, however, and as a result the California Independent System Operator would be compelled to exercise its backstop capacity authority and to purchase the *same capacity* under the CPM at a price of \$55/kW-yr. The resulting additional costs for ratepayers are a direct consequence of the artificially low level of the waiver trigger and the mismatch between the level of the waiver trigger and the CPM payment.

In addition, as NRG pointed out in its comments, the waiver trigger level has not kept pace with the actual cost of installing generation capacity over the last five years.

For all these reasons, NRG respectfully asks the Commission to augment the Scoping Memo and Ruling to include a consideration of the level of Local RA waiver trigger within the scope of Phase 1 of this proceeding.

Respectfully submitted this 13th day of January, 2012 at San Francisco, California.

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By /s/ Abraham Silverman  
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