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 (Filed October 20, 2011)

REPLY OF THE ALLIANCE FOR RETAIL ENERGY MARKETS TO COMMENTS ON PHASE 1 RESOURCE ADEQUACY PROPOSALS

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April 20, 2012

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The Alliance for Retail Energy Markets ("AReM") [1] submits this reply to comments on the Resource Adequacy ("RA") proposals filed on April 11, 2012. This reply is filed in accordance with *Administrative Law Judge's Ruling Seeking Comment* ("Ruling"), issued March 23, 2012, by Administrative Law Judge ("ALJ") David M. Gamson. AReM focuses its reply on parties' comments regarding AReM's proposed revisions to the coincidence adjustment factor, flexible capacity, multi-year forward procurement, the CAISO's proposal for changes to the annual RA showing, and PG&E's request for exemptions from the RA requirements.

I. PARTIES OPPOSING REVISIONS TO THE COINCIDENCE ADJUSTMENT FACTOR FAIL TO OFFER ANY CREDIBLE JUSTIFICTION FOR CONTINUING EXISTING CROSS SUBSIDIES.

Only the Division of Ratepayer Advocates ("DRA") and Pacific Gas and Electric Company ("PG&E") commented on AReM's proposal to revise the coincidence adjustment factor. Both oppose its adoption in the Phase 1 decision, but provide little substance to justify the continued cross subsidies under the current method. Significantly, neither party spoke in

[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.

opposition to the proposal at the January 26, 2012 workshop, during which a representative of the California Energy Commission ("CEC") provided recommended changes to the proposal and indicated the CEC's support for its adoption. [2] As made clear then and in 2011 when this issue was previously addressed in R.09-10-032, the current approach for calculating the coincidence adjustment factor, which has been in place since 2005, involves cross subsidies between direct access and bundled customers. Specifically, the single, system average coincidence adjustment factor based on the IOUs' profile as used today shifts costs from bundled utility customers to direct access.

As previously explained by AReM, [3] use of this single, system average factor means that, as the actual coincident peak of any one load-serving entity ("LSE') shifts away from the average coincident peak, that LSE is allocated a disproportionate share of total RA requirements. Stated another way, LSEs whose load shapes are non-coincident with the system peak cause less system costs on peak, but are allocated more than their fair share of total RA requirements under the current method. The unavoidable conclusion is that the current method of calculating and applying the coincidence adjustment factor is inconsistent with cost causation and basic fairness because electric service providers' ("ESPs") load shape, due to the type of customers they serve, is non-coincident with the system peak.

In fact, DRA states its support for cost causation principles "whereby all LSEs should face costs consistent with cost causation," [4] but then ignores the obvious and long-standing cross

[2] AReM adopted the CEC's approach in AReM's revised proposal submitted in its April 11, 2012 comments. See, pp. 4-5.
[3] See AReM's April 11th Comments, pp. 2-5.
[4] DRA's April 11th Comments, p. 7.

subsidies under the current approach in seeking further delay. DRA offers a laundry list of "determinations and analysis" [5] to be accomplished before the Commission should decide this matter, such as the appropriate categories to use,[6] how location of the resource may affect the coincidence adjustment factor, the magnitude of the cross subsidies, and whether correcting the coincidence adjustment factor will provide an incentive to bundled customers to move to direct access service.

Since 2005, direct access customers have been bearing a disproportionate share of RA requirements, which is inconsistent with cost causation principles. The magnitude of the cross subsidies should be irrelevant, but were theorized in the CEC's analysis, which showed the differences between the coincidence factors of the investor-owned utilities and ESPs.[7] While the differences may be small to the IOUs, they represent real and significant costs to the much smaller ESPs and their direct access customers. Moreover, the potential for switching has no relevance given the current cap on direct access load.

In addition, DRA's request to address "location of the resource" in evaluating the coincidence adjustment factor is misplaced. Location of the resource has no relationship to the coincidence adjustment factor, but location of load does. This explains why both the current method and the revised approach proposed by the CEC uses hourly loads specific to each Transmission Charge Area ("TAC"), a locational component for the load. In fact, location-specific loads completely characterize the relationship of an LSE's load relative to the system peak for the California System Operator ("CAISO"). In other words, any factor, such as location

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[5] *Ibid.*

[6] AReM's adopted the CEC's proposal, as described in its April 11th comments. and no longer includes categories.

[7] Please see, CEC workshop presentation, R.11-10-023, January 26, 2012, slide 11, and CEC workshop presentation, R.09-10-032, January 18, 2011, slides 4-7. Both are available at: http://www.cpuc.ca.gov/PUC/energy/Procurement/RA/ra_history.htm

or customer mix that affe cts the LSE's coincidence with the system peak will be reflected in its historic load data by TAC area. The CEC staff method relies on historic data, because that is the most complete representation of an LSE's coincidence patterns. LSEs ' sector mix rarely changes significantly from year to year.

In short, DRA's mis-direction ploy should be rejected. DRA fails to provide any substantive justification for further delay or for continuing the unfair cross subsidies in place today.

On the other hand, PG&E at tempts to argue that new requirements for flexible capacity, if adopted, might somehow require a radical change in the coincidence adjustment factor. Specifically, PG&E argues that the Commission might change the current method to allocate the RA requirements over "many more hours than the system peak hour" or to add an entirely new allocation method for "procurement responsibility among load serving entities as a function of the variability and forecast uncertainty of load and resources that each load ser ving entity brings to the system."[8]

These arguments are specious. There have been no proposals or workshop discussions in this proceeding regarding potential modifications to the coincidence adjustment factor as a result of flexible capacity needs or req uirements. At best, the CAISO has suggested allocating such needs like it does for Local RA Requirements, based on load -ratio share, which is a peak -based system. Capacity requirements have always been based on system peak and no party has proposed deviating from this. If flexible capacity needs lead to a change in the basis of the RA requirement several years down the road, both the forecast metric and the associated coincidence adjustment might be reconsidered, but that issue has not been raised and is n ot before the

[8] PG&E's April 11th Comments, p. 6.

Commission for its consideration at this time. In the meantime, the CEC's method is what is used for non-jurisdictional LSEs and is consistent with the CAISO's tariff. PG&E has offered no reason to deviate from this approach or any rationale to justify the continuation of the cross subsidies in place since 2005.

In summary, DRA and PG&E have failed to justify their opposition to AReM's proposal or explain why the current cross subsidies should continue. Accordingly, AReM urges the Commission to adopt, in its Phase 1 decision, AReM's April 11th proposal to revise the current method for calculating the coincidence adjustment factor. The existing cross subsidies have been in place since 2005, disadvantaging direct access customers. The Commission and stakeholders have had ample opportunity to discuss the issue and debate the details in R.09-10-032 and in this proceeding. Moreover, the CEC has endorsed the proposed revisions and finds them necessary to address cross subsidies and ensure consistency. AReM therefore respectfully requests Commission approval.

II. IF THE COMMISSION DETERMINES THAT FLEXIBLE CAPACITY NEEDS MUST BE ADDRESSED IN 2013, ONLY THE ENERGY DIVISION'S APPROACH IS WORKABLE.

AReM and many other parties have filed comments noting concerns about both of the flexible capacity proposals that have been introduced in this proceeding and recommending further consideration in the next phase or a separate phase of this proceeding.[9] Only two parties, Abengoa Solar[10] and Brookfield Energy Marketing[11] supported implementing the CAISO's proposal for 2013. AReM does not support implementing the CAISO's proposal for 2013 and,

[9] See, for example, AReM's April 11th Comments, pp. 5-8, California Large Energy Consumers Association's April 11th Comments, pp. 2-6, and EnerNOC's April 11th Comments, pp. 5-6.
[10] Abengoa Solar's April 11th Comments, p. 8.
[11] Brookfield Energy Marketing's April 11th Comments, p. 5.

indeed, even the CAISO has withdrawn its previous recommendation to do so. [12] However, EnerNOC supports implementing Energy Division's re-vamped Maximum Cumulative Capacity ("MCC") buckets for 2013. [13] Further, The Utility Reform Network ("TURN") argues that the Commission should adopt Energy Division's proposal if it decides to act now.[14]

AReM agrees with the CAISO that the implementation of flexible capacity requirements should be further discussed and evaluated with a view toward implementation for the 2014 RA compliance year. If nevertheless action is taken for the 2013 RA compliance year, and the Energy Division's proposal is adopted, the definitions of which resources go into which buckets require further clarification. If any action is taken that would effect the 2013 RA compliance year, the Commission must also recognize that implementation of Energy Division's proposal for 2013 would require grandfathering of LSEs' RA contracts that were in place prior to the Phase 1 decision. Finally, the Commission would also need to recognize the relative "last-minute" implementation of the Energy Division's proposal and provide LSEs' with compliance flexibility for the first year.

III. ALL FLEXIBLE CAPACITY ISSUES SHOULD BE ADDRESSED IN THE RA PROCEEDING.

Several parties have proposed addressing some or all of the flexible capacity issues in the Long-Term Procurement Plan ("LTPP") proceeding, Rulemaking 12-03-014, while others are agnostic on where such consideration occurs.[15] For example, Southern California Edison ("SCE") recommends that the Commission identify the attributes needed for flexible capacity in the LTPP, but handle other aspects of the flexible capacity issues in the RA proceeding. [16]

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[12] CAISO's April 11th Comments,
[13] EnerNOC's April 11th Comments, p. 10.
[14] TURN's April 11th Comments, p. 4.
[15] See, for example, Calpine's April 11th Comments, p. 6, TURN, p. 3.
[16] SCE's April 11th Comments, p. 12.

Significantly, the CAISO disagrees with SCE's approach. The CAISO's April 11th Comments argued that all flexible capacity issues are best handled in the RA proceeding, noting that adding such issues to the LTPP would only distract and delay action.[17] The CAISO had previously supported this same approach in its comments on the LTPP scope.[18]

AReM agrees with the CAISO that all flexible capacity issues should be addressed in the RA proceeding. AReM strongly opposes bifurcating flexible capacity issues into separate proceedings, which could only lead to confusion and possibly conflicting outcomes. The RA proceeding is designed to address compliance requirements for all LSEs, which requires resolution of the full range of flexible capacity issues, including the characteristics of the operational attributes being sought, the definition of the procurement requirements, the determination of each LSE's obligation, and indeed whether flexible capacity requirements should be embedded in RA requirements or addressed solely through the ancillary service markets. AReM would note that the Independent Energy Producers Association ("IEP") agrees with AReM that the RA proceeding is the "more appropriate venue" for these issues,[19] as does PG&E.[20] Accordingly, AReM requests that the Phase 1 decision clarify that all flexible capacity issues will be addressed in the RA proceeding.

IV. AReM CAN SUPPORT INCLUDING CONSIDERATION OF A MULTI-YEAR FORWARD LSE PROCUREMENT OBLIGATION FOR RA RESOURCES WITHIN THE SCOPE OF THIS PROCEEDING.

While the Scoping Memo adopted for this proceeding does not include consideration of a multi-year RA procurement obligation for LSEs within the scope of this proceeding,[21] many

[17] CAISO's April 11th Comments, p. 6.
[18] *Comments of the California Independent System Operator Corporation on the Preliminary Scoping Memo*, R.12-03-014, April 6, 2012, p. 5.
[19] IEP's April 11th Comments, p. 5.
[20] PG&E's April 11th Comments, p. 5.
[21] Scoping Memo, December 27, 2011, pp. 2 -6.

diverse parties have recommended that the Commission address this issue.[22] As AReM described in its April 11 th comments, however, no party has provided a concrete proposal in Phase 1 for how such an obligation would be imposed. If the Commission were to include a discussion of a multi-year RA procurement obligation, AReM will support those discussions. AReM cautions, however, that any such RA obligation must be structured to ensure that the compliance rules are simple, easy to understand, enforceable and, most importantly, commercially viable. In addition, implementation of any new RA procurement requirement must be designed to address how the imposition of such requirements will impact competitive retail markets and what market mechanisms are or will be available to allow the obligated entities to manage their new transactional obligations and the new risks that a multi-year forward obligations creates.

AReM's position is that the correct approach to a multi-year RA obligation is to implement that requirement through a centralized capacity market.[23] AReM continues to believe strongly that a centralized market is the optimum commercial and competitive approach, because it would promote pricing transparency and allow LSEs to manage risk and effectively transact on a multi-year forward basis. However, to the extent that implementation of a multi-year forward obligation is imposed in the near term, AReM remains willing to consider other proposals that offer the same outcomes as a centralized forward clearing market and would complement competitive wholesale and retail markets. Therefore, AReM requests that a subsequent phase of the RA proceeding consider these details of multi-year procurement obligations if the Commission is so inclined to address this issue at this time.

[22] See, for example, CAISO April 11 th Comments, p. 7, Independent Energy Producers' April 11 th Comments, p. 3, and DRA April 11 th Comments, p. 6, California Large Energy Consumers Association, p. 7.
[23] See, most recently, AReM's April 11 th comments, p. 9-10.

V. CAISO's PROPOSAL FOR A 12-MONTH RA SHOWING IS NOT READY FOR ADOPTION.

The CAISO's April 11th comments are unclear about its specific request regarding a 12-month showing for RA resources. First, the CAISO requests that the Phase 1 decision require that "all LSEs show all [RA] resources procured at the 90 % level for each of the 12 months of 2013."[24] Later in its comments, the CAISO states that its request for a 12-month showing is specific to flexible capacity and would either "begin" in 2013 or be "for 2013."[25] These proposals are unclear and seem to differ or lack clarity compared to earlier CAISO proposals.[26] For example, LSEs already submit an annual showing demonstrating 100 % procurement of their Local RA requirements for all 12 months of the year, but the CAISO's proposals have not addressed that current requirement nor specified that, as a result, the proposal for 2013 must therefore be to show procurement of System RA capacity.

AReM believes that consideration of the CAISO's proposal for a 12-month showing is premature and requires further analysis to address the issues identified when the 5-month 90% System RA showing was first adopted by the Commission. For background, the number of months to be covered by the annual RA showing was debated extensively in Rulemaking ("R.") 01-10-024 and R.04-04-003. In Decision ("D.") 04-01-050, the Commission considered and rejected a rule to require an annual showing of 90% year-round.[27] While the Commission adopted the 90% rule for the summer months in D.04-01-050, it made the rule subject to possible future adjustment if implementation resulted in significantly increased costs or was shown to foster collusion and/or the exercise of market power in the Western energy markets.[28] In R.04-

[24] CAISO's Comments, R.11-10-023, April 11, 2012, p. 6.
[25] CAISO's April 11th Comments, p. 19.
[26] See, for example, CAISO's Supplemental Filing, R.11-10-023, March 2, 2012, pp. 18-19.
[27] D.04-01-050, p. 30.
[28] D.04-01-050, footnote 10, p. 11.

04-003, the Commission continued discussion of this topic in addressing further RA implementation details. A major issue in the proceeding was whether the rule would raise costs for consumers, a concern raise by AReM and others. [29] In the end, the Commission reaffirmed the 90% rule for the summer months only, referencing these cost concerns:

> Establishing firm requirements of meeting 90% of summer capacity needs a year ahead and 100% firming up of capacity a month -ahead will serve to ensure that sufficient capacity will be available if it is required while allow ing ***LSEs ample flexibility to procure their energy needs economically***. In other words, the Commission does not believe that short -term markets should be relied upon for capacity needs, but that short -term markets can be valuable in meeting energy requirements in a least-cost manner. (emphasis added)[30]

Obviously, Phase 1 of this proceeding has included insufficient consideration of this topic and failed to address the significant concerns raised in R.01 -10-024 and R.04-04-003 regarding a requirement for a 12-month showing of RA capacity. Accordingly, AReM recommends that this issue be deferred and considered more fully when this proceeding addresses flexible capacity issues.

VI. PG&E'S PROPOSALS FOR RA EXEMPTIONS SHOULD BE DENIED.

In what has seemingly become an annual appeal, PG&E once again requests special exemptions from meeting the RA requirements for certain of its retail rate schedules for which it claims RA capacity credit. [31] As PG&E notes, these issues are not within the Phase 1 scope. Nevertheless, PG&E asks for the exemptions so as it can receive RA credit while not meeting the rules required for other RA resources. Thus, PG&E would essentially get free RA capacity for not following the rules by which all other LSEs must abide. AReM members have no such opportunity to obtain free RA capacity. PG&E has been on notice for years that its programs

[29] For example, see discussion in D.04 -10-035, pp. 36-37.
[30] D.04-10-035, p. 37.
[31] PG&E's April 11th Comments, pp. 9-12.

should be revised and has been indulged by this Commission in the past. [32] It is time for the Commission to stop enabling PG&E and reject its request.

VII. CONCLUSION.

AReM respectfully requests that the proposed decision for Phase 1 take the following actions:

- Adopt AReM's proposal to revise the current method for calculating the coincident adjustment factor in the RA program and end the current cross subsidies in RA procurement obligations;

- Acknowledge that implementation of flexible capacity requirements can not be effectively implemented for 2013, providing time to further evaluate them; if, however, the Commission decides that flexible capacity requirements are needed for the 2013 RA compliance year, the Energy Division's MCC approach requires further clarification, compliance flexibility and grandfathering of pre-existing RA contracts as discussed herein;

- If the Commission elects to revise the scope of this proceeding to include consideration of multi-year procurement obligations, AReM will support those discussions provided they address an obligation that is the designed to be simple, commercially feasible and supportive of competitive retail markets.

- Clarify that all flexible capacity issues will be addressed in the RA proceeding;

[32] D.11-06-022, pp. 57-61.

- Defer action on the CAISO's proposal for a 12-month annual RA showing until a later phase of this proceeding; and
- Reject PG&E's requests for exemptions from meeting the RA requirements whil e retaining RA capacity credit for certain of its retail rate schedules.

Respectfully submitted,

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