

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

Order Instituting Rulemaking to Integrate and
Refine Procurement Policies and Consider
Long-Term Procurement Plans.

Rulemaking 12-03-014
(Filed March 22, 2012)

**OPENING COMMENTS OF THE MARIN ENERGY AUTHORITY REGARDING
THE RULEMAKING ISSUED ON LONG-TERM PROCUREMENT PLANNING**

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In accordance with the provisions of Rule 6.2 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the Marin Energy Authority (“MEA”) submits these opening comments on the Order Instituting Rulemaking (“OIR”) issued on March 22, 2012 regarding the Long-Term Procurement Planning (“LTPP”). Herein, MEA urges the Commission in the interest of thoroughness and procedural efficiency to: (i) address statutory modifications to the Cost Allocation Mechanism (“CAM”) including those resulting from the enactment of SB 790, and (ii) address all CAM-related issues in R.12-02-009.

I. INTRODUCTION

Subsection “5.1 Long-Term System and Local Reliability Resource Plan” of the OIR presents “Procurement Rules to Comply with SB 695 on the Cost Allocation Methodology” as a topic within scope of the LTPP proceeding. Specifically, the OIR states that:

Senate Bill (SB) 695[] codified aspects of the cost allocation rules established in D.06-07-029 and D.07-09-044. D.11-05-005 narrowly reconciled differences between SB 695 and our prior procurement rules. This proceeding will consider any necessary modifications to fully implement the RA provision of SB 695.¹

¹ OIR at 9.

MEA supports the Commission's intent to fully address modifications to the implementation of the CAM. However, in the intervening time since D.11-05-005 was issued SB 790 was signed into law on October 8, 2011. Public Utilities Code ("P.U. Code") §365.1 as amended pursuant to SB 790 is attached hereto as Exhibit A. The Commission should address these revisions to P.U. Code §365.1 by statute SB 790 concurrently with those still unimplemented due to SB 695. Furthermore, MEA recommends the Commission shift all CAM-related issues to be addressed and resolved in R.12-02-009, where all necessary parties are actively engaged and where these issues can be addressed more efficiently.

II. SPECIFIC MODIFICATIONS TO CAM MADE BY SB 790

SB 790 institutes various modifications to statute including the addition of passage §365.1(b)(2)(B) within the CAM subsection of the P.U. Code, which reads as follows:

(B) If the commission authorizes or orders an electrical corporation to obtain generation resources pursuant to subparagraph (A), the commission shall ensure that those resources meet a system or local reliability need in a manner that benefits all customers of the electrical corporation. The commission shall allocate the costs of those generation resources to ratepayers in a manner that is fair and equitable to all customers, whether they receive electric service from the electrical corporation, a community choice aggregator, or an electric service provider.²

This new language requires the Commission to address two key issues: (1) the need to address when CAM is appropriately applied to a resource, and (2) the need to ensure that the costs allocated under CAM are fair. The inclusion of this language clearly impacts all LSEs and their customers. These statutory modifications must be accounted for by the Commission, along with prior revisions made to §365.1 pursuant to SB 695, when it considers "any necessary modifications to fully implement" the CAM.

² SB 790 inserts a new paragraph labeled as §365.1(b)(1)(B) and reassigns the passage previously present in that location to §365.1(b)(1)(C). *Emphasis added.*

III. CAM-RELATED ISSUES SHOULD BE ADDRESSED IN R.12-02-009 WHERE ALL OTHERS COMPONENTS OF SB 790 ARE BEING IMPLEMENTED

MEA strongly recommends the Commission address CAM-related issues in R.12-02-009, where other statutory modifications made by SB 790 are being considered. Furthermore, the necessary parties (all three large IOUs, current and prospective CCAs, ESPs, and direct access customers) for addressing CAM-related issues are formal parties already engaged in R.12-02-009. It would be procedurally efficient to shift CAM-related issues to this proceeding, rather than continuing with parallel proceedings both implementing portions of SB 790.

LTPP proceedings are expansive and laborious, and approaching CAM-related issues within this proceeding will likely cause further delays. R.12-02-009 provides the Commission with the opportunity to address CAM-related issues in a more focused proceeding where all of the necessary parties are already present.

IV. CONCLUSION

MEA urges the Commission in the interest of thoroughness and procedural efficiency to: (i) address statutory modifications to CAM (including those resulting from the enactment of SB 790), and (ii) address CAM-related issues in R.12-02-009. MEA thanks the Commission, Assigned Commissioner Florio and Assigned Administrative Law Judge Gamson for their consideration of the comments set forth herein.

Exhibit A

Disclaimer: The bill is compared here to the law that was in effect at the time. Note that the code section(s) in question may have been subsequently amended.

PUBLIC UTILITIES CODE §365.1 AS AMENDED BY SB 790 ON 12/1/2011

(a) Except as expressly authorized by this section, and subject to the limitations in subdivisions (b) and (c), the right of retail end-use customers pursuant to this chapter to acquire service from other providers is suspended until the Legislature, by statute, lifts the suspension or otherwise authorizes direct transactions. For purposes of this section, “other provider” means any person, corporation, or other entity that is authorized to provide electric service within the service territory of an electrical corporation pursuant to this chapter, and includes an aggregator, broker, or marketer, as defined in Section 331, and an electric service provider, as defined in Section 218.3. “Other provider” does not include a community choice aggregator, as defined in Section 331.1, and the limitations in this section do not apply to the sale of electricity by “other providers” to a community choice aggregator for resale to community choice aggregation electricity consumers pursuant to Section 366.2.

(b) The commission shall allow individual retail nonresidential end-use customers to acquire electric service from other providers in each electrical corporation’s distribution service territory, up to a maximum allowable total kilowatthours annual limit. The maximum allowable annual limit shall be established by the commission for each electrical corporation at the maximum total kilowatthours supplied by all other providers to distribution customers of that electrical corporation during any sequential 12-month period between April 1, 1998, and the effective date of this section. Within six months of the effective date of this section, or by July 1, 2010, whichever is sooner, the commission shall adopt and implement a reopening schedule that commences immediately and will phase in the allowable amount of increased kilowatthours over a period of not less than three years, and not more than five years, raising the allowable limit of kilowatthours supplied by other providers in each electrical corporation’s distribution service territory from the number of kilowatthours provided by other providers as of the effective date of this section, to the maximum allowable annual limit for that electrical corporation’s distribution service territory. The commission shall review and, if appropriate, modify its currently effective rules governing direct transactions, but that review shall not delay the start of the phase-in schedule.

(c) Once the commission has authorized additional direct transactions pursuant to subdivision (b), it shall do both of the following:

(1) Ensure that other providers are subject to the same requirements that are applicable to the state’s three largest electrical corporations under any programs or rules adopted by the commission to implement the resource adequacy provisions of Section 380, the renewables portfolio standard provisions of Article 16 (commencing with Section 399.11), and the requirements for the electricity sector adopted by the State Air Resources Board pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code). This requirement applies notwithstanding any prior decision of the commission to the contrary.

(2) (A) Ensure that, in the event that the commission authorizes, in the situation of a contract with a third party, or orders, in the situation of utility-owned generation, an electrical corporation to obtain generation resources that the commission determines are needed to meet system or local area reliability needs for the benefit of all customers in the electrical corporation’s distribution service

territory, the net capacity costs of those generation resources are allocated on a fully nonbypassable basis consistent with departing load provisions as determined by the commission, to all of the following:

- (i) Bundled service customers of the electrical corporation.
- (ii) Customers that purchase electricity through a direct transaction with other providers.
- (iii) Customers of community choice aggregators.

(B) If the commission authorizes or orders an electrical corporation to obtain generation resources pursuant to subparagraph (A), the commission shall ensure that those resources meet a system or local reliability need in a manner that benefits all customers of the electrical corporation. The commission shall allocate the costs of those generation resources to ratepayers in a manner that is fair and equitable to all customers, whether they receive electric service from the electrical corporation, a community choice aggregator, or an electric service provider.

~~(B)~~ (C) The resource adequacy benefits of generation resources acquired by an electrical corporation pursuant to subparagraph (A) shall be allocated to all customers who pay their net capacity costs. Net capacity costs shall be determined by subtracting the energy and ancillary services value of the resource from the total costs paid by the electrical corporation pursuant to a contract with a third party or the annual revenue requirement for the resource if the electrical corporation directly owns the resource. An energy auction shall not be required as a condition for applying this allocation, but may be allowed as a means to establish the energy and ancillary services value of the resource for purposes of determining the net costs of capacity to be recovered from customers pursuant to this paragraph, and the allocation of the net capacity costs of contracts with third parties shall be allowed for the terms of those contracts.

~~(C)~~ (D) It is the intent of the Legislature, in enacting this paragraph, to provide additional guidance to the commission with respect to the implementation of subdivision (g) of Section 380, as well as to ensure that the customers to whom the net costs and benefits of capacity are allocated are not required to pay for the cost of electricity they do not consume.

(d) (1) If the commission approves a centralized resource adequacy mechanism pursuant to subdivisions (h) and (i) of Section 380, upon the implementation of the centralized resource adequacy mechanism the requirements of paragraph (2) of subdivision (c) shall be suspended. If the commission later orders that electrical corporations cease procuring capacity through a centralized resource adequacy mechanism, the requirements of paragraph (2) of subdivision (c) shall again apply.

(2) If the use of a centralized resource adequacy mechanism is authorized by the commission and has been implemented as set forth in paragraph (1), the net capacity costs of generation resources that the commission determines are required to meet urgent system or urgent local grid reliability needs, and that the commission authorizes to be procured outside of the Section 380 or Section 454.5 processes, shall be recovered according to the provisions of paragraph (2) of subdivision (c).

(3) Nothing in this subdivision supplants the resource adequacy requirements of Section 380 or the resource procurement procedures established in Section 454.5.

(e) The commission may report to the Legislature on the efficacy of authorizing individual retail end-use residential customers to enter into direct transactions, including appropriate consumer protections.