

**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

R.12-03-014
(Filed March 22, 2012)

**COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS
AND THE DIRECT ACCESS CUSTOMER COALITION
ON PRELIMINARY SCOPING MEMO**

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The Alliance for Retail Energy Markets (“AReM”) ¹ and the Direct Access Customer Coalition (“DACC”) ² submit these comments on the Preliminary Scoping Memo included in the *Order Instituting Rulemaking* (“OIR”) for the above-captioned proceeding, which was issued on March 27, 2012. The OIR establishes this date for submission of comments.

I. COMMENTS ON PRELIMINARY SCOPING MEMO

The OIR notes that this proceeding will address resource plan requirements, that is, the new generation needed to meet system and local requirements. In addition, the OIR lists six broad topics of rule and policy issues that it plans to consider. AReM and DACC address two of these topics below: “Multi-Year Flexible Capacity Procurement Rules (Topic 1)”³ and Procurement Rules to Comply with SB 695 on Cost Allocation Methodology (Topic 2).⁴

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 DACC is a regulatory alliance of commercial, industrial and governmental customers who have opted for direct access to meet some or all of their electricity needs.

³ OIR, p. 9.

⁴ OIR, p. 9.

A. Comments on Multi-Year Flexible Capacity Procurement Rules.

The OIR states that it may consider “new rules for forward procurement of flexible resources to support grid reliability.”⁵ Issues related to flexible capacity procurement requirements are also being addressed in R ulemaking (“R.”) 11-10-023, the on-going Resource Adequacy (“RA”) proceeding. In fact, parties to that proceeding, including AReM, are already considering proposals by the Energy Division and the California Independent System Operator (“CAISO”) for implementation in 2013 or 2014. In addition, the CAISO has an ongoing stakeholder process to address these issues as well. Simultaneously addressing related topics in this LTPP proceeding must be carefully coordinated so as to avoid confusion, minimize market uncertainty, and ensure a set of regulations that operate to support wholesale and retail competitive markets. Moreover, the focus in these LTPP proceedings has been and will continue to be procurement by the Investor-Owned Utilities (“IOUs”). In short, the LTPP proceeding is not the appropriate venue to address RA obligations by non-IOU load-serving entities (“LSEs”).

Therefore, AReM and DACC recommend adopting the following policy focus for this LTPP with respect to multi-year forward flexible capacity requirements: when and if any flexible capacity requirements are implemented in R.11 -10-023, this proceeding will then determine the procurement rules pursuant to which the IOUs will manage the procurement necessary to meet their respective RA procurement obligations. AReM and DACC recommend that the Preliminary Scoping Memo be revised to adopt this more narrow focus to address IOU procurement of flexible capacity resources.

⁵ OIR, p. 9.

B. Comments on Procurement Rules to Comply with SB 695 on the Cost Allocation Methodology.

Since 2007, the Commission has repeatedly deferred action on key policy issues surrounding: (a) IOU procurement on behalf of “benefiting customers;” (b) the Cost Allocation Mechanism (“CAM”); (c) and implementation of the CAM -related directives in Senate Bill (“SB”) 695. Most recently, in Decision (“D.”) 11 -05-005, the Commission, as the OIR notes, “narrowly reconciled differences” between SB 695 and the Commission’s prior cost allocation rules,⁶ but left for a later phase or successor proceeding a lengthy list of unresolved CAM-related policy issues. This new OIR now states that the Commission will consider “any necessary modifications to fully implement the RA provision of SB 695,”⁷ which presumably will include the remaining unresolved policy issues identified in D.11-05-005, including: (1) establishing the criteria by which application of the CAM is appropriate; (2) evaluating whether a test can be developed to determine when those criteria have (or have not) been met; (3) determining how CAM would be applied if any new utility -owned generation (“UOG”) is authorized; and (4) developing policies and processes for distinguishing between system and bundled resource needs and related cost allocation.⁸

Significantly, however, the OIR fails to acknowledge that SB 7 90⁹ also modified the Commission’s CAM rules. The implementation of SB 790 is underway in R .12-02-009 and a broad coalition of parties, including AReM and DACC, have recently proposed addressing the CAM-related modifications required by SB 790 for both community choice aggregation

⁶ OIR, p. 9.

⁷ OIR, p. 9.

⁸ For background, the “system versus bundled” issue was first raised by AReM in R.06-02-013. The Commission subsequently determined in D.07 -12-052 (pp. 116 -120) that the issue should be addressed in the following LTPP proceeding. In the subsequent proceeding, the Commission stated that it needed to address this “gap” in its rules to avoid cross subsidies between the IOUs and electric service providers, but no action was taken in that proceeding (see, R.08-02-007, p. 11 and R.08-02-007, Attachment A, p. A-27).

⁹ California Statutes 2011, Chapter 599.

(“CCA”) and direct access in that proceeding. To ensure the most comprehensive solution, AReM and DACC recommend that the CAM-related policy issues enumerated above be addressed and resolved in R.12 -02-009, and the applicability of those modifications can then be incorporated into the LTPP procurement process, including when and whether the CAM is appropriate for any portion of the resource plans adopted in this proceeding . Since the IOUs are already parties to and engaged in R.12-02-009, as are all other key parties to whom the CAM applies, including direct access customers, Electric Service Providers and CCAs , addressing the CAM issue in that proceeding will better ensure a comprehensive review and the development of a consistent statewide policy for all CAM-related issues.

Having made this recommendation that CAM-related issues should be addressed in R.12-02-009, there is one CAM related issue that deserves separate comment – the issue of an opt-out from the CAM for LSEs, which is discussed in the immediately following section.

C. Include LSE Opt-Out in the CAM-Related Proceeding.

The CAM imposes non-bypassable charges associated with IOU-directed procurement on direct access and CCA customers, which limits the freedom of their LSEs to manage their customers’ energy needs in accordance with their energy preferences, preferences that may include a desire for “greener” resources and/or other customer specific procurement options. Beginning in 2006, AReM and others proposed that n on-IOU LSEs should be able to opt -out of the CAM under certain defined circumstances. While the Commission found the concept “appealing”¹⁰ and considered it in several RA and LTPP proceedings, it has failed to adopt any LSE opt-out mechanism.

First, in D.06-07-029, the Commission said it would like to agree with parties proposing

¹⁰ D.06-07-029, p. 35.

opt-out, but had no “viable enforcement program or mechanism for doing so.”¹¹ The Commission deferred the LSE opt -out issue to Phase 2 of the RA proceeding active at the time, R.05-12-013:

We are supportive of the proposal that load serving entities (LSEs) that can demonstrate that they are fully resource adequate over a sufficiently long time horizon should be allowed to opt -out of the cost -allocation system. 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.¹²

The Commission did consider the LSE opt -out in the subsequent RA Phase 2 decision, D.10-06-018, but was unable to reach a decision and punted the issue back to the LTPP proceeding:

We find that the issue of the opt -out did not receive adequate attention in the workshops, the Staff Report, or the comments, and that the record does not support adoption of any of the opt -out proposals before the Commission. Therefore, pending further order of the Commission the CAM procedure adopted in D.06 -07-029 will remain in effect without modification by this decision... We note that Senate Bill 69 -5 (Stats. 2009, Ch. 337), which among other things added Section 365.1, impacts certain aspects of the CAM. While we do not modify the CAM at this time, we anticipate addressing any necessary changes to it in the forthcoming LTPP rulemaking. In this manner we will be able to take a comprehensive look at the CAM and make any and all necessary changes.¹³

Despite the Commission’s promise in D.10 -06-018 and AReM’s request,¹⁴ LSE opt-out was not included in the scope of the next LTPP proceeding, R.10-05-006.

AReM and DACC urge the Commission to address this long -standing policy issue with the other CAM-related issues. As noted above, AReM and DACC propose resolving all CAM -

¹¹ D.06-07-029, p. 35.

¹² D.06-07-029, p. 5.

¹³ D.10-06-018, p. 75.

¹⁴ *Comments of the Alliance for Retail Energy Markets on Preliminary Scoping Memo* , R.10-05-006, June 4, 2010, pp. 4-5.

related policy issues comprehensively in R.12-02-009 and thus recommend including consideration of LSE opt-out mechanisms in that proceeding.

II. CONCLUSION

AReM and DACC appreciate the opportunity to comment on the Preliminary Scoping Memo in R.12-03-014 and respectfully request that the Commission take the following actions:

1. Ensure that there is close coordination between the two Commission proceedings that are dealing with RA -related issues and flexible capacity requirements (this one and R.11-10-023) and CAISO stakeholder proceedings on the same topics.
2. Address the unresolved CAM -related policy issues identified in D.11 -05-005 in R.12-02-009, which is already scheduled to address CAM -related modifications adopted in SB 790, to ensure a comprehensive review and the development of a consistent statewide policy for all CAM-related issues.
3. Include consideration of a LSE opt-out mechanism in the CAM-related proceeding.

Respectfully submitted,



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