

**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)

**PROPOSED UTILITY PROCUREMENT RULES BY THE
ALLIANCE FOR RETAIL ENERGY MARKETS,
DIRECT ACCESS CUSTOMER COALITION
AND MARIN ENERGY AUTHORITY**

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The Alliance for Retail Energy Markets¹ (“AReM”), Direct Access Customer Coalition² (“DACC”) and Marin Energy Authority³ (“MEA”) respectfully submit proposed utility procurement rules in Track 3 of the Long -Term Procurement Plans (“LTPP”) proceeding in accordance with the *Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge* issued May 17, 2012 (“May 17th Scoping Memo”) in this Rulemaking 12-03-014 (“R.12-03-014” or “LTPP Proceeding”) and the schedule set forth by Administrative Law Judge (“ALJ”) David M. Gamson by electronic mail on October 4, 2012.

I. INTRODUCTION

The May 17th Scoping Memo established three Tracks for the LTPP Proceeding. Track 1 (Local Reliability) and Track 2 (System Reliability) have been underway since May 2012.

AReM, DACC and MEA have been active jointly in Track 1, with a focus on competitive wholesale and retail market issues. Per the May 17th Scoping Memo, Track 3 will address

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 educational, commercial, industrial and governmental customers who have opted for direct access to meet some or all of their electricity needs.

³ MEA is the not -for-profit public agency that administers the Marin Clean Energy community choice aggregation program. MEA launched electricity service to customers in May 2010. It is the first operating CCA program in the state of California.

procurement by the utilities for their bundled utility customers, specifically: (a) changes to existing procurement rules and adoption of new procurement rules; and (b) procurement plans for bundled utility customers.⁴ The Track 3 schedule issued by ALJ Gamson begins with this filing for the submission of proposed procurement rules by parties. While the process by which the proposed procurement rules will be vetted has not yet been set, the Track 3 schedule nevertheless provides for a proposed decision in January 2013 and filing of the investor-owned utilities' ("IOUs") Bundled Procurement Plans in March 2013. While the May 17th Scoping Memo notes that an amended scoping memo was anticipated, which would include "more detail and an updated schedule," none has been issued.⁵

As noted, this Track 3 proceeding is intended to establish the procurement rules that would apply to the IOUs, and to implement those rules through the filing of a Bundled Procurement Plan by each IOU. AReM, DACC and MEA herein provide proposed threshold rules to be applied by the IOUs in planning and procuring energy and capacity to meet the load and projected load growth of their bundled utility customers over the LTPP planning period. These proposed rules ensure compliance with statutory requirements and Commission cost causation principles and will serve to support and encourage competitive wholesale and retail markets by reducing the potential for stranded costs and the imposition of non-bypassable charges on direct access ("DA") and community choice aggregation ("CCA") retail choice customers. AReM, DACC and MEA respectfully request that the Commission adopt these proposed rules and direct the IOUs to apply them in developing and implementing their Bundled Procurement Plans.

⁴ May 17th Scoping Memo, p. 11.

⁵ *Ibid.*

II. PROPOSED PROCUREMENT RULES

A. Background

The IOUs' Bundled Procurement Plans are required to comply with Public Utilities ("P.U.") Code Section 454.5, which was implemented by Assembly Bill ("AB") 57.⁶ AB 57 was enacted in 2002 and set forth the requirements the IOUs must meet to serve their bundled utility customers. The May 17th Scoping Memo⁷ cites the "upfront standards" specified in AB 57⁸ that provide for pre-approval of IOU procurement, so long as that procurement is consistent with the approved plans. However, AB 57 also requires the IOUs to meet their bundled load and load growth over the long term and it is time for the Commission to enforce these statutory requirements. The relevant provisions of P.U. Code Section 454.5 are as follows:

(b) An electrical corporation's proposed procurement plan shall include, but not be limited to, **all of the following**:

...

(9) A showing that the procurement plan will achieve the following:

...

(B) The electrical corporation shall create or maintain a diversified procurement portfolio consisting of both short-term and **long-term** electricity and electricity-related and demand reduction products.

Accordingly, AReM, DACC and MEA propose specific procurement rules for the IOUs that comply with these statutory requirements and applicable Commission policies, as discussed below. The Commission should approve the proposed procurement rules and direct the IOUs to apply them in forecasting their bundled load, preparing their Bundled Procurement Plans, and implementing the plans once approved by the Commission. In developing the proposed rules,

⁶ Stats 2002, Ch 835.

⁷ May 17th Scoping Memo, p. 11.

⁸ P.U. Code Section 454.5(b)(7).

AReM, DACC and MEA have drawn on previous proposals that we have jointly or separately presented in Track 1 and in previous LTPP proceedings.⁹

B. Procurement Rules

AReM, DACC and MEA propose that the Commission adopt the following IOU bundled procurement rules:

Procurement Rule No. 1: The IOUs shall develop forecasts of bundled customer load that exclude existing and forecasted DA and CCA load.

Each IOU's Bundled Procurement Plan must ensure that adequate energy and capacity will be procured to meet its forecasted bundled customer load and load growth over the specified planning period. The plans must also ensure that each IOU will comply with the Resource Adequacy ("RA") and Renewable Portfolio Standards ("RPS") requirements. While not subject to Commission approval or jurisdiction with respect to pricing,¹⁰ ESPs and CCAs must also procure resources to meet their own load, load growth and applicable regulatory requirements (*i.e.*, RA and RPS). If the IOUs do not exclude existing and forecasted DA and CCA load from their planning forecasts, they will over-procure. Indeed, in past LTPPs, Pacific Gas and Electric Company and San Diego Gas & Electric Company improperly included DA and CCA loads in their bundled forecasts. However, after this fact was pointed out by AReM and MEA, the Commission ordered the IOUs to modify their Bundled Procurement Plans to exclude such DA and CCA loads.¹¹ DA and CCA load forecast data are collected by the California Energy Commission ("CEC") and the Commission should direct the IOUs in this proceeding to obtain

⁹ See, for example, *Comments of the Alliance for Retail Energy Markets on Preliminary Scoping* Memo, R.10-05-006, June 4, 2010, pp. 1 -3; *Testimony on Behalf of the Alliance for Retail Energy Markets, Direct Access Customer Coalition, and Marin Energy Authority*, R.12-03-014, Track 1, June 25, 2012, pp. 20 -29; and D.12-01-033, R.10-05-006, January 12, 2012, p. 30.

¹⁰ P.U. Code Section 394(f).

¹¹ D.12-01-033, January 12, 2012, R.10-05-006, pp. 30-31 and Ordering Paragraph No. 8.

the most recent data available from the CEC to use in preparing their bundled customer load forecasts.

AReM, DACC and MEA propose this rule to ensure that the practice of excluding DA and CCA load from the Bundled Procurement Plans established in D.12 -01-033 continues in this ongoing LTPP Proceeding, so as to avoid inappropriate bundled load forecasts, which would inevitably lead to unwarranted over-procurement by the IOUs and subsequent claims for stranded cost recovery from DA and CCA customers. Quite simply, if the IOUs are not serving or are not expected to serve the load, they should not be procuring to meet it, nor should any of the costs associated with procurement to meet their bundled load be imposed on customers who are not taking service from them. Specifically, excluding existing and forecasted DA and CCA loads from forecasts of bundled utility load should exempt such DA and CCA load from stranded cost payments. Ensuring accurate bundled load forecasts is a first step in reducing and ultimately eliminating the IOUs' future claims for stranded cost recovery related to their bundled procurement.

Procurement Rule No. 2: In developing the forecasts of bundled customer load, the IOUs shall evaluate the characteristics of the load that are driving bundled load growth, including changes to load factor (*i.e.*, "peakiness"), and report to the Commission how these factors have been incorporated into their Bundled Procurement Plans for the long term.

If the forecasted load of the bundled utility customers is driving the peak or decreasing the system load factor, then bundled customers should pay for the resources necessary to meet that need. This approach is consistent with the principle of cost causation -- the customers causing the particular need for the resource should pay for it.

The Commission has been consistently clear in its goals and policies that it intends to apply cost causation principles and minimize cross subsidies in ratemaking. Recently, in its

rulemaking initiating a review of the IOUs' residential rates, the Commission explained that “[c]ost causation means that costs should be borne by those customers who cause the utility to incur the expense.”¹² The Commission also cited its 1987 decision, which “noted that avoiding cross-subsidies and supporting cost-causation principles ‘achieves equity in rates by relating the costs imposed on the utility system to the customer responsible for those costs.’”¹³

In fact, in D.07 -12-052, the Commission found that differences in load characteristics between the IOUs and the ESPs may lead to cross subsidies.¹⁴ The Commission stated that “[i]f bundled customers’ load is exacerbating the peak or decreasing the load factor (as [Southern California Edison Company] suggested), then the bundled customers should pay for the resources necessary to meet that need.”¹⁵ The Commission also expressed concern that the IOUs might “inappropriately” request cost recovery through the Cost Adjustment Mechanism (“CAM”) when the new generating resources were actually needed to meet bundled load.¹⁶

Indeed, the Legislature recently enacted Senate Bill (“S.B.”) 790, which addressed concerns about fair competition in the retail choice market and imposes new statutory requirements relative to CAM treatment and CCAs.¹⁷ In particular, SB 790 added a new provision to the P.U. Code requiring the Commission to ensure “fair and equitable” CAM allocations to all customers, including DA and CCA customers.¹⁸ SB 790 also added a new provision to P.U. Code Section 366.2(a) that prohibits cost shifting between CCA and bundled utility customers:

¹² R.12-06-013, June 28, 2012, p. 13.

¹³ D.87-12-066 as cited in footnote 19 in R.12-06-013, p. 13.

¹⁴ D.07-12-052, December 20, 2007, pp. 117-119.

¹⁵ D.07-12-052, p. 117.

¹⁶ D.07-12-052, p. 118.

¹⁷ Stats 2011, Ch 599.

¹⁸ P.U. Code Section 365.1(c)(2)(B).

- (4) The implementation of a community choice aggregation program shall not result in a shifting of costs between the customers of the community choice aggregator and the bundled service customers of an electrical corporation.

Accordingly, this proposed procurement rule is designed to ensure that the IOUs procure to meet the needs of their own bundled customers in compliance with AB 57, SB 790, and the Commission's cost causation principles.

Procurement Rule No. 3: Each IOU shall calculate its unmet resource need by comparing its bundled customer load forecast and load characteristics with all of its resources, including utility-owned generation and power purchase contracts. The IOU shall include in its calculation of unmet resource need the megawatts and megawatt-hours associated with: (a) power contracts that currently serve bundled customer load, which are terminating during the planning period; and (b) power plants that currently serve bundled customer load and are projected to retire or otherwise be unavailable during part or all of the planning period.

Procurement Rule No. 4: Each IOU's Bundled Procurement Plan shall specify the resources that it will procure or build to meet 100% of the identified unmet resource need. The IOU's unmet resource need shall be met by both existing and new generation resources with a priority given to demand response and energy efficiency, as required by P.U. Code Section 454.5(b)(9)(C). Each IOU shall consider output in megawatts and megawatt-hours, type of resource, and operational characteristics such that the planned resources match the IOU's bundled load and the profile and characteristics of that load.

P.U. Code Section 454.5 requires that the IOUs' unmet resource needs related to their bundled customer loads be met over both the short- and long-term planning period.¹⁹ To the extent the IOUs' bundled customer load growth is driving system peak or system ramping requirements, the IOUs have an obligation to procure supply to meet those needs to ensure that bundled customer costs are not shifted to others. The IOUs are also required to procure

¹⁹ See, for example, P.U. Code §§ 454.5(a), and 454.5(b)(9)(A), (B), and (C).

resources to replace terminating supply contracts, supply from resources that are closing or retiring, such as units subject to once through cooling requirements, or supply that is lost due to outages, such as the San Onofre Nuclear Generating Station.

Applying these procurement rules, if an IOU had a contract with a 500-megawatt (“MW”) steam plant that was used primarily to serve bundled load and planned to retire or shut down within five years, the IOU would be required to include that 500 MWs in its unmet resource need as part of its Bundled Procurement Plan and propose replacement resources to meet that long-term bundled need, perhaps through new generation resources or other cost-effective resources. Regardless of the type of replacement supply ultimately approved by the Commission, it is key that the Commission recognize that the 500-MWs represent bundled need and the IOU should not be allowed to claim that the replacement resource should be subject to CAM treatment, thereby burdening the retail competitive market with an unjustified non-bypassable charge.

The proposed procurement rules will clarify how bundled customer load is to be defined and how it is to be met over the long term. Moreover, enforcement of these rules will ensure that DA and CCA customers do not subsidize the unmet needs of the bundled customers.

III. PROPOSED PROCESS

The May 17th Scoping Memo contemplated an amended scoping memo and revised schedule, which have not been issued.²⁰ The initial Track 3 schedule identified reply comments²¹ followed by a proposed decision, but noted that workshops may be held. AReM, DACC and

²⁰ May 17th Scoping Memo, p. 11.

²¹ On November 1, 2012, ALJ Gamson sent an electronic mail setting November 30, 2012 as the date for reply comments.

MEA propose that the Commission hold one or more workshops in early December to discuss the proposed procurement rules filed by parties. Parties could also discuss at the workshop the need for working groups or additional process to work out proposed final rules for the Commission's adoption in early 2013 and to support the filing of the IOUs' Bundled Procurement Plans in March 2013.

IV. CONCLUSION

AReM, DACC and MEA have proposed procurement rules for the IOUs to apply in preparing and implementing their Bundled Procurement Plans and a proposed process for moving forward in Track 3. AReM, DACC and MEA respectfully request that the Commission move forward expeditiously to ensure that the IOUs' Bundled Procurement Plans: (1) accurately address the unmet resources needs of their bundled customers, thereby complying with applicable statutes, satisfying cost causation principles, and avoiding unnecessary and unwarranted cost-shifting to DA and CCA customers; and (2) are timely filed in 2013. AReM, DACC and MEA look forward to working with the Commission and other parties in this Track 3 proceeding.

Respectfully submitted,



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On behalf of
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