

**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)

**COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS
ON ENERGY DIVISION'S PROPOSALS**

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The Alliance for Retail Energy Markets (“AReM”)¹ submits these comments in accordance with the direction in the *Phase 3 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge* (“Phase 3 Scoping Memo”), issued August 2, 2013, which set this date for filing of comments on proposals issued by Energy Division staff on January 16, 2014 and on workshops held in December 2013 and January 2014.² AReM has no comments at this time on the Staff proposal for establishing the Effective Load Carrying Capacity for wind and solar resources, nor does AReM have any comment on the Qualifying Capacity and Effective Flexible Capacity Calculation Methodologies for Energy Storage, but reserves the right to file reply on these topics.

AReM focuses its comments herein on the Staff’s proposals addressing (1) Qualifying Capacity and Effective Flexible Capacity Calculation Methodologies for Supply-Side Demand Response (“DR”) resources and (2) Resource Adequacy (“RA”) implementation proposals.

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 Phase 3 Scoping Memo, R.11 -10-023, p. 6, set February 17, 2014 for filing of comments, which is a Commission holiday, making the due date, February 18.

I. NET QUALIFYING CAPACITY AND EFFECTIVE FLEXIBLE CAPACITY FOR THIRD-PARTY DEMAND RESPONSE RESOURCES SHOULD BE SET BY CAISO TESTING.

The Staff proposes to set Net Qualifying Capacity (“NQC”) for DR resources using the Load Impact Protocols for 2015³ and ultimately through probabilistic modeling.⁴ The Staff also proposes that Effective Flexible Capacity (“EFC”) for demand resources be determined by submitting the necessary data to the CAISO for verification for 2015,⁵ but ultimately also be determined through probabilistic modeling.⁶

AReM strongly disagrees with these approaches. The Load Impact Protocols were designed to ensure proper use of ratepayer funding for utility-run programs. Third-party DR programs are not funded by ratepayers and should be *encouraged* rather than *burdened* with unnecessary and complex requirements. Put simply, requiring application of the Load Impact Protocols or complex probabilistic modeling to set RA capacity for third-party DR resources creates barriers to entry. Alternatively, testing by the CAISO would be simple, understandable, and straightforward for those endeavoring to bring new DR resources on-line, thereby *encouraging* them to participate in California’s energy markets.

The Commission has consistently endeavored to remove barriers to entry for DR resources, most recently with adoption of Resolution E-4630, which puts in place the necessary rules by which third-party DR resources may directly participate in CAISO markets. In fact, the CAISO and others have previously expressed concerns that the Load Impact Protocols are

³ Staff Proposal on Qualifying Capacity and Effective Flexible Capacity for Energy Storage and DR Resources, p. 5.

⁴ *Ibid*, p. 7.

⁵ *Ibid*, pp. 5-6

⁶ *Ibid*, p. 7.

unduly complex and create barriers to entry.⁷ While the Commission decided at that time to continue with the Load Impact Protocols because of a lack of information, it affirmed that it “did not wish to impose such barriers.”⁸ Moreover, the Commission had previously signaled its willingness to endorse CAISO testing to set NQC for DR resources, noting in Rulemaking (“R.”) 09-10-032:

[I]t is reasonable that DR resources that act like a dispatchable supply resource may appropriately have QC evaluated via a test, similar to dispatchable conventional generators.⁹

The CAISO’s Draft Final Proposal for Flexible Resources proposes using testing to establish the EFC for DR resources.¹⁰ AReM urges the Commission to adopt approaches that *encourage* participation by DR resources and are *consistent with* the rules put in place by the CAISO.

Third parties attempting to bring innovation and new resources to California should not be subject to potential barriers nor burdened by complex, non-transparent, and time-consuming protocols. The process of setting NQC through testing at the CAISO has been well established for years for most resources. Likewise, eastern markets have a track record for setting capacity for DR resources through testing. AReM therefore recommends that the Commission’s preferred approach should be to establish NQC and EFC through testing at the CAISO and that the proposal for use of the Load Impact Protocols and probabilistic modeling be withdrawn.

⁷ D.11-10-003, pp. 18, 19 and 21.

⁸ D.11-10-003, p. 21.

⁹ D.10-06-026, p. 38.

¹⁰ *Flexible Resource Adequacy Criteria and Must Offer Obligation*, Draft Final Proposal, February 7, 2014, p. 37.

II. CERTAIN STAFF PROPOSALS ON RA IMPLEMENTATION REQUIRE MODIFICATION.

The Staff issued a separate proposal, which addressed certain RA implementation issues (“RA Implementation Proposal”). As discussed below, several of these proposals are acceptable to AReM. Others, however, require modification. Each is presented below in the order in which it appeared in the RA Implementation Proposal.

A. RA Benefits Must Be Allocated to the Applicable Load-Serving Entities When the Utility Procures On-Behalf-Of Resources Outside of Its Service Territory.

The Staff proposes to eliminate the RA benefits provided to load-serving entities (“LSEs”) when resources procured using the cost allocation mechanism (“CAM”), including Combined Heat and Power (“CHP”) resources, are located outside of the service territory of the utility procuring the resources.¹¹ AReM strongly opposes this approach, which would violate the Commission’s statutory obligations and represent a complete reversal of long-standing Commission policy. Put simply, the relevant statute requires that, when the utilities procure capacity on behalf of direct access customers, the associated RA benefits **shall** be allocated to those customers for use by their LSEs in meeting their RA requirements.¹² The Commission has also determined that the net capacity costs of CHP procurement pursuant to the settlement approved in Decision (“D.”) 10-12-035 will be paid for by direct access customers and that the RA benefits associated with those projects must also be made available to the direct access customers’ LSEs to meet their RA requirements.¹³ It is simply untenable to think that the

¹¹ RA Implementation Proposal, p. 4.

¹² Public Utilities Code Section 365.1(c)(2)(B): “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.” (emphasis added)

¹³ Specifically, the Commission concluded in D.10-12-035, Conclusion of Law 9, p. 65, that requiring utility procurement of CHP resources on behalf of ESPs “would trigger Pub. Util. Code Section 365.1(c)(2), which requires the Commission to allocate the net capacity costs **and resource adequacy**

Commission has approved procurement by the utilities of resources that are located in territories other than their own, is prepared to require customers to pay for that procurement, but is going to disallow any capacity benefit from those resources, either for bundled customers or for retail choice customers. In addition to violating statute, such an approach will lead to unnecessary and costly procurement to meet the RA obligations and must be avoided.

As noted at the January 27th workshop, the main issues of concern involve Path 26, a transmission-constrained corridor, and ensuring that the RA credit provided to the LSEs is useable. AReM believes the “usability” of the RA from these units can and should be resolved by relying on the current Path 26 allocations assigned to all LSEs, in accordance with D.07-06-029.¹⁴

Therefore, AReM recommends that the Commission allocate the CAM/CHP RA benefits as required by statute and allow the LSE receiving the RA credit to use its Path 26 allocation, if it so chooses, to “move” the RA credit to another utility jurisdiction for purposes of its RA compliance showings. Under current practice, if an LSE requires an additional allocation of Path 26 rights, the LSE may negotiate a bilateral arrangement with another LSE to procure such additional Path 26 allocations. Thus, the current Path 26 rules allow LSEs to “move” their RA credit where they need it and to procure additional allocation rights if they are needed.

Given the flexibility with respect to Path 26 rights that already exists, AReM does not support the approach of taking the RA value of these resources “off the top” of the Path 26 allocation, as suggested by Southern California Edison (“SCE”). SCE’s approach would reduce the Path 26 allocation to all LSE’s to the unfair benefit of SCE and the other IOUs, contrary to

benefits to all customers, including ESP and CCA customers.” (emphasis added) See also, Ordering Paragraph 5.

¹⁴ D.07-06-029, Ordering Paragraph 1, p. 59.

Commission RA policy in which all LSEs have equal rights to the import and Path 26 transmission allocations for RA purposes. AReM requests that, if the Commission does decide to implement an “off the top” allocation of Path 26 capacity to address the CHP RA issues discussed herein, it conduct a workshop to describe in more detail just how the new allocation will work, so that all the nuances can be fully vetted and understood.

B. Requiring the Utilities to Manage Outages for CAM/CHP Resources Seems Workable.

AReM appreciates the issue identified by Energy Division regarding the need for a party to be responsible for managing outages and resource replacements of CAM/CHP resources under the CAISO’s Standard Capacity and replacement rules.¹⁵ AReM believes the Energy Division’s proposal is reasonable, *i.e.*, that the IOUs – who are the counterparty to the contracts with the CAM resources – should be the entities that manage any replacement obligation. Moreover, AReM would expect that the costs of any outage replacement procurement would be recovered from direct access customers in the same proportion that the CAM contract costs are recovered. However, AReM would request that the Staff note that, to the extent the underlying CAM contract requires the CAM counterparty to pay for replacement costs in total or in part, that payment would also be shared with the direct access customers paying for the CAM replacement procurement.

C. Flexible RA Benefits From CAM/CHP Must Include True-Ups.

The Staff proposes calculating Flexible RA benefits from CAM resources using the same calculation method as the Staff uses for calculating Local RA benefits from CAM resources. The Staff further proposes to make only two annual allocations per year for such Flex RA

¹⁵ RA Implementation Proposal, pp. 4-6.

benefits -- an initial allocation in July and a final allocation in September, which is used in the Year-Ahead Annual showing by the LSEs due October 31st each year.¹⁶ While the proposal states it is specific to “CAM resources,”¹⁷ AReM presumes that it applies to all resources procured by the utilities on-behalf-of direct access customers, including CHP resources, and asks that the Staff be explicit about this. That said, AReM supports using the same calculation method as is used for calculating Local RA benefits from CAM resources, but finds that the Staff’s proposal to provide only initial and final annual allocations is inadequate.

The Flexible Capacity requirements are newly adopted and will first be enforced as of 2015. Given the inherent uncertainty regarding how the new requirements will play out, how difficult procurement will be for LSEs, and associated transaction costs, AReM requests that the Staff provide *reallocations* of the Flex RA benefits from CAM resources *after* issuing the final annual allocation in September to reduce risk of over-procurement and lower costs to consumers. Flex RA capacity has been designated as meeting a System RA need. Accordingly, AReM proposes that the Staff provide Flex RA CAM reallocations at the same time as the proposed quarterly reallocations for CAM System RA resources, as proposed in Section 4.3 of the RA Implementation Proposal.¹⁸

D. The Proposal to Aggregate Procurement of Local RA Should be Withdrawn.

The Staff proposes to allow LSEs with aggregated Local RA Requirements of 5 MW or less in a utility’s service territory to be exempt from the requirement to procure in each Local Reliability Area (“LRA”) and instead be allowed to procure all required Local RA in any LRA of its choosing. The proposal states that this approach will reduce transaction costs for the affected

¹⁶ RA Implementation Proposal, p. 7.

¹⁷ RA Implementation Proposal, p. 7.

¹⁸ RA Implementation Proposal, p. 12.

LSEs and mitigate market power.¹⁹ AReM does not agree that such an exemption should be implemented.

AReM has long raised concerns about the potential exercise of market power by suppliers in LRAs and the transaction costs associated with procuring small quantities of Local RA in multiple locations. However, addressing these concerns through outright exemptions runs counter to the fact that meeting RA obligations is a fundamental compliance obligation that all LSEs should be prepared to meet. Instead, the Commission has established several safeguards when creating its Local RA program, such as a waiver trigger price, aggregation of some of the LRAs in the service territory of Pacific Gas and Electric Company, and exemptions for LSEs with requirements less than 1 MW. These mechanisms should be sufficient and further exemptions from procurement based on the size of the LSE should not be implemented, as direct exemptions create issues of free ridership. Therefore, AReM proposes that the Staff withdraw its aggregation proposal.

E. Providing One Local RA Adjustment Is Reasonable.

Staff proposes to reduce the Local RA adjustments to once a year in April, noting that more frequent adjustments are no longer needed given the decline in load migration.²⁰ AReM concurs and finds the proposal reasonable.

F. Reducing the Frequency of Reallocations to Quarterly for Reliability Must-Run (“RMR”) and Certain CAM Resources is Reasonable.

Staff proposes to reduce the frequency of reallocations for System RA CAM resources and RMR resources from monthly to quarterly, noting that the amount being reallocated each month is small at present.²¹ AReM concurs and finds the proposal reasonable.

¹⁹ RA Implementation Proposal, pp. 9-10.

²⁰ RA Implementation Proposal, pp. 11-12.

III. CONCLUSION.

AReM appreciates Staff's efforts in preparing thoughtful proposals to address outstanding RA issues. As discussed above, AReM finds several of the proposals reasonable and recommends modifications to others, as follows:

- Set NQC and EFC for DR resources through testing at the CAISO, rather than employ the Load Impact Protocols.
- Allocate the RA benefits associated with CAM/CHP resources procured outside of the utility's service territory; LSEs receiving the RA credit may then choose to use their Path 26 allocations to "move" the RA credit to the procuring utility's service territory. Path 26 allocations should not be modified to take the RA associated with these units "off the top." Simply prohibiting the RA from such units from counting toward meeting RA requirements violates statutory requirements and Commission policy and would be inefficient and potentially costly.
- Staff's proposal seems reasonable to require the utilities to manage outages of CAM/CHP resources in accordance with the CAISO's rules, so long as any payment the IOUs receive from the supplier that offsets the replacement costs are shared with direct access customers as well.
- Flex RA capacity benefits associated with CAM/CHP resources should be reallocated quarterly, which is the same reallocation timeline that Staff is proposing for reallocations of CAM System RA and RMR resources.

²¹ RA Implementation Proposal, p. 12.

- Staff's proposal to allow LSEs with 5 MW or less of Local RA Requirements to aggregate their procurement should be withdrawn.
- Staff's proposal to reduce Local RA adjustments to once a year is reasonable.
- AReM does not object to quarterly reallocations of CAM System RA and RMR resources.

Respectfully submitted,



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