

**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 FLEXIBLE CAPACITY PROPOSALS
DATED FEBRUARY 10, 2014**

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February 24, 2014

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The Alliance for Retail Energy Markets (“AReM”)¹ submits these comments in accordance with the electronic ruling of Administrative Law Judge David M. Gamson issued February 18, 2014, which set this date for filing of comments on *Staff Proposals on the Implementation of Flexible Capacity Procurement Framework*, issued by Energy Division staff on February 10, 2014 (“Commission Staff Proposals”).

I. INTRODUCTION

The implementation of flexible capacity requirements and integrating those requirements into the existing Resource Adequacy (“RA”) program and protocols is proving to be somewhat complex. AReM appreciates the extensive efforts of the Staffs of both the California Public Utilities Commission (“Commission” or “CPUC”) and the California Independent System Operator (“CAISO”) to establish comprehensive regulations to implement flexible capacity requirements, each within their respective jurisdictional authorities, and believes that both

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.

organizations remain committed to avoiding conflicting procurement obligations and/or conflicting compliance requirements. Nevertheless, a comparison of the Commission Staff Proposals to the CAISO's Flexible Resource Adequacy Criteria and Must Offer Proposal ("FRAC MOO") Draft Final Proposal, dated February 7, 2014 shows that the Commission Staff and the CAISO Staff have a long way to go to reconcile their two quite separate views of how flexibility requirements will be integrated into the RA program, how each organization will manage the elements of the program that are within their respective jurisdictions, and most importantly, how the two organizations will reconcile their different approaches.

In these comments, AReM presents its analysis of the disparities that exist between the two organizations' proposals. AReM's purpose in explicitly listing these disparities is to stress the critical necessity for the two organizations to resolve these disparities and present to market participants a set of protocols and compliance requirements that are not in conflict with one another. Without such clarity and unanimity between the two organizations, market participants will be left to "serve two masters." The upshot will be inefficiencies, unnecessary procurement costs, increased risk of non-compliance, and further diminution of the competitive markets and customer choice that both organizations profess to support.²

² AReM members remain skeptical that incorporating flexible capacity requirements into the RA program is the best or most efficient way to address the need for increased flexibility resources in order to manage the impact of increased intermittency created by renewable resources. That skepticism is rooted in a belief that the characteristics needed to integrate increasing quantities of renewable resources into the electric grid are actually ancillary services to provide enhanced spinning reserves, regulation, and load following capability, and that the focus for managing these new requirements should be on designing new ancillary services rather than imposing new capacity requirements. See, for example, *Comments by the Alliance for Retail Energy Markets on Resource Adequacy Flexible Capacity Procurement Joint Parties' Proposal*, December 26, 2012, R.11-10-023, pp. 4-5; and *Reply of the Alliance for Retail Energy Markets*, April 15, 2013, R.11-10-023, pp. 2-5;

II. COMMENTS

AReM's comments on the Commission Staff Proposals and its identification of differences between them and the CAISO Proposals are as follows:

A. Flexible Capacity Categories

Both the Commission Staff and CAISO Staff seem to have coalesced around three (rather than the previously proposed four) flexible capacity categories. However, it is not clear whether there is agreement between the two organizations with respect to how much of a Load-Serving Entity's ("LSE's") portfolio can come from each category. Commission Staff Proposals would require at least 80% to come from Category 1 and no more than 20% and 5% respectively from Categories 2 and 3, where Categories 2 and 3 are "cumulative."³ The CAISO Proposals indicate that that the CAISO intends to set the applicable contribution from each category based on technical specifications, but has not specified them at present except for Category 3, which has a pre-determined limit of 5%.⁴

Any disparity between the two organizations in what they consider to be a compliant portfolio must be avoided for the reasons outlined in the Introduction.

B. Term Over Which the Flexible Capacity Categories Will Remain In Place

The Commission Staff Proposals state that the three categories of flexible capacity will terminate no later than December 31, 2017.⁵ The CAISO Proposals do not have any sunset date, but do state that the categories will be re-assessed in early 2016.⁶ The two organizations should

³ Commission Staff Proposals, p. 14.

⁴ CAISO Proposals, p. 34.

⁵ Commission Staff Proposals, p. 13.

⁶ CAISO Proposals, p. 31.

sync up the time frame in which the applicability of the categories will be reviewed and modified so that market participants can factor that into their transactions.

C. Allocation of Flexible Capacity Requirements by CAISO to Local Regulatory Authorities (“LRAs”) and by LRAs to Their Jurisdictional LSEs

The CAISO has developed a methodology for determining the overall flexible capacity requirements that it will impose on the LRAs by analyzing the aggregate of the LSEs’ renewable portfolios. The Commission Staff has indicated that they do not oppose the methodology that the CAISO has developed, and apparently do not object to the CAISO having the jurisdiction to impose the flexible capacity requirement on each LRA. However, the Commission Staff Proposals allocate the flexible capacity requirements to each LSE under Commission jurisdiction on a load-ratio share for 2015 but Staff will explore other methods “based on causation” in the future.⁷ AReM supports allocation methods that do not lead to cost shifting. That said, AReM does not necessarily object to the load-ratio share approach for allocating the aggregate flexible capacity to the various LSEs under Commission jurisdiction, but is concerned that there may not be agreement among market participants that such allocation is the most equitable manner for the allocation, and that a portfolio specific allocation may be preferred by some market participants. If consideration is given to a portfolio specific allocation, then there will be an additional complexity that the Commission must address, that is: (1) What if an LSE’s portfolio changes – will there be true ups for that, and when will they occur?; and (2) How would an allocation of the flexible capacity requirements on a portfolio basis change the CAM allocations?

⁷ Commission Staff Proposals, p. 5.

D. Establishing the Effective Flexible Capacity (“EFC”) for RA Resources

At the February 13, 2014 CAISO stakeholder meeting on the CAISO Proposals, it became clear based on the discussions between CAISO and Commission staffs that this is an area where the two organizations are at significant odds with one another, both with respect to which organization has the ultimate jurisdiction to determine the EFC for the various types of flexible resources and how the EFC should be set for various types of resources. Of course, jurisdictional issues are only a problem if the two organizations do not agree on how to count the EFC for RA resources. Unfortunately, a review of Commission Staff Proposals and the CAISO proposals shows that the two organizations are not in agreement on how to count EFC from resources nor in the details of what criteria the resources must meet to be deemed “flexible.”⁸

E. Exemptions From Requirements

The Commission Staff Proposals would allow any LSE with an allocation of flexible capacity requirements less than 25 MW in a month to be exempt from the requirement.⁹ If this exemption causes a deficiency that the CAISO backstops, the cost of the backstop would be allocated to non-exempt LSEs.¹⁰ AReM objects to this exemption. There are already RA rules in place to ease the procurement burden on small LSEs; an outright exemption of this size, however, will create serious issues of free-ridership. Moreover, this Commission Proposal conflicts with the CAISO proposals that do not include any exemptions, and that would allocate backstop procurement directly to deficient LSEs.¹¹

⁸ See, for example, CAISO Proposals, pp. 26-27 and CPUC Staff Proposals, pp. 6-7.

⁹ CPUC Staff Proposals, p. 14.

¹⁰ *Ibid.*

¹¹ CAISO Proposals, p. 39.

Finally, such an exemption would likely require modifications to the allocation of CAM resources. Customers paying for CAM resources are entitled to receive the associated RA value of that resource. If certain LSEs are exempt from flexible capacity procurement requirements, the customers of those LSEs get no Flex RA value from the CAM resource and, thus, should not have to pay for it. The Commission would have to develop a proposal to re-distribute the Flex CAM allocation to the LSEs with the flexible capacity procurement obligation and to ensure that customers of exempt LSEs do not pay for Flex CAM resources that provide no associated Flex RA value.

F. Future Modifications

Both the Commission Staff Proposals and the CAISO Proposals contain an outline of how and when each organization will review and potentially update elements of their flexible RA capacity regulations. The Commission Staff Proposals state that the Commission will review many of the flexible capacity regulations, including the three flexible capacity categories and the participation of use-limited resources in advance of the 2016 compliance year.¹² The CAISO Proposals state that it will review its methodology for determining the flexible capacity requirements in 2016 (*i.e.*, after the initial 2016 compliance showings have been made).¹³ Both organizations should coordinate their review and improvement processes, since changes to one are of the program is likely to necessitate changes in another.

¹² CPUC Staff Proposals, p. 16.

¹³ CAISO Proposals, p. 31.

G. Elimination of the Maximum Cumulative Capacity (“MCC”) Buckets and the Proposed Penalty Structure for Flexible Capacity Requirements

AReM supports the Staff’s proposal to eliminate the MCC buckets,¹⁴ a step that AReM has long advocated. AReM agrees that the advent of flexible capacity procurement obligations has eliminated the need for MCC buckets. In addition, AReM supports the Staff’s proposal to apply the existing penalty structure and cure period for System RA deficiencies to the flexible capacity obligations.¹⁵ Flexible capacity is System RA resources and, thus, the same penalty structure should apply.

III. CONCLUSION

Coordination and unanimity between the Commission and CAISO on the details of the flexible capacity requirements will be essential to the success of implementation of this new RA compliance regime. AReM therefore respectfully requests that the Commission address and resolve each of the issues raised herein. Where there are clearly differences of opinion between the two organizations, AReM urges renewed efforts to provide market participants with resolutions that both organizations are willing to accept.

AReM is submitting these same comments to the CAISO as comments on the CAISO Proposals.

Respectfully submitted,



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¹⁴ CPUC Staff Proposals, pp. 15-16.

¹⁵ CPUC Staff Proposals, pp. 10-11.