

**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)

**REPLY OF THE ALLIANCE FOR RETAIL ENERGY MARKETS
TO COMMENTS ON ENERGY DIVISION'S FLEXIBLE CAPACITY PROPOSALS**

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March 6, 2014

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The Alliance for Retail Energy Markets (“AReM”)¹ submits this reply in accordance with the electronic ruling of Administrative Law Judge David M. Gamson issued February 27, 2014, which set this date for filing of reply to comments filed on February 24, 2014 regarding *Staff Proposals on the Implementation of Flexible Capacity Procurement Framework*, issued by Energy Division staff on February 10, 2014 (“Staff Proposal”).

I. UNIFORM FLEXIBLE CAPACITY REQUIREMENTS ARE CRITICAL.

A common theme in the filed comments is parties’ concern about the divergent Flexible Capacity proposals offered by Energy Division staff and the California Independent System Operator (“CAISO”).² Load-serving entities (“LSEs”) under Commission jurisdiction must abide by Commission compliance requirements as well as CAISO tariff requirements in the wholesale market. Divergent requirements put all such LSEs in the untenable position of

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 See, for example, Independent Energy Producers Association, p. 3; Large-Scale Solar Association, pp. 2-3; San Diego Gas & Electric, p. 2.

“serving two masters” with the associated market uncertainty and risk of non-compliance. AReM raised these same concerns in its comments ³ and again joins with others in respectfully requesting that the staffs of the Commission and the CAISO work together to develop common rules and requirements.

II. A WORKSHOP IS NEEDED TO CLARIFY PROPOSALS.

Several parties requested a workshop to discuss and clarify elements of the Staff’s proposals.⁴ AReM concurs that a workshop is needed to correct and clarify the Staff’s proposal, work through details about how the requirements will work in practice, and discuss new proposals offered by parties in their February 24th comments. For example, parties had differing interpretations of Staff’s proposal for a 25-MW exemption.⁵ Some interpreted the proposal as an exemption from meeting the Flexible Capacity *requirements* and others interpreted it as an exemption from meeting the Flexible Capacity *procurement categories*.⁶ Parties also raised questions about the differences between the Energy Division and CAISO proposals, some supporting the CAISO’s rules and others supporting the Staff’s proposals.⁷ Some noted that the CAISO should take the lead in certain areas, rather than the Commission as Energy Division had proposed.⁸ Others seek details about the Resource Adequacy (“RA”) showings that LSEs will be obligated to make to both the Commission and CAISO and how the new – and differing –

³ AReM, pp. 2 and 7.

⁴ Independent Energy Producers Association, p. 1 and NRG Energy, p. 6.

⁵ Staff Proposal, p. 14.

⁶ See, for example, AReM, p. 5 and Marin Clean Energy, p. 5.

⁷ For example, some parties, like Marin Clean Energy (p. 3), supported the CAISO’s proposed method for allocating requirements to LSEs and others, like Southern California Edison (p. 3), supported Energy Division’s method, at least on an interim basis. Also, some parties supported the Staff’s fixed percentages for procurement by categories (*e.g.*, Southern California Edison, p. 5), whereas the CAISO had proposed variable monthly quantities (*e.g.*, CAISO, pp. 5-6) and opposed Staff’s fixed percentages.

⁸ For example, Marin Clean Energy (p. 6) and SDG&E (p. 13) propose that the CAISO, rather than the Commission, collect additional information on Flexible Capacity resources.

Flexible Capacity compliance rules will work in practice.⁹ Finally, some parties, most notably San Diego Gas & Electric Company (“SDG&E”),¹⁰ have introduced new proposals that warrant further discussion.

While Commission Staff held three workshops leading up to and following release of its January 2014 RA proposals, there have been no workshops to address the new Flexible Capacity requirements that the Commission intends to impose for the 2015 RA compliance year. In Decision (“D.”) 13-06-024, the Commission committed as follows:

For the next year, we will gather information, analyze such information, hold workshops to consider refinements to the adopted flexible capacity framework, and build a record for such refinement in our expected June 2014 decision in this docket or its successor.¹¹

As Shell Energy pointed out, the Commission also directed the Energy Division to “analyze the information in the RA filings ... to determine the availability of flexible resources now and over the next several years.”¹² However, Energy Division has not provided parties with the results of its analysis and the only “record” created thus far on the proposed Flexible Capacity requirements are parties’ February 24th comments showing disagreement and confusion. Accordingly, the Commission should fulfill its commitment and schedule a workshop at the earliest possible date to promote a common understanding of the proposals on the table and ensure a full record on which to base its decision on Flexible Capacity requirements.

⁹ See, for example, CAISO, p. 11, and Marin Clean Energy, pp. 4 and 7.

¹⁰ SDG&E proposed a new approach for unbundling Flexible Capacity and generic RA capacity in its February 24th comments at pp. 9-10.

¹¹ D.13-06-024, p. 56.

¹² Shell Energy, p. 2 citing D.13-06-024, p. 57.

III. THE COMMISSION SHOULD CONSIDER DELAYING ENFORCEMENT OF THE FLEXIBLE CAPACITY REQUIREMENTS.

As noted above, parties are significantly concerned about the divergent proposals offered by the CAISO and Commission staff and how such divergent rules would be implemented in practice. As Marin Clean Energy noted:

The marketplace should have adequate time between finalization of the regulatory structure (including details on product definitions, categories, and procurement rules) so that buyers and sellers can coalesce around relatively standardized contract language.¹³

Indeed, the current divergent proposals in play hamper market develop and create uncertainty for LSEs and suppliers alike. A June 2014 decision requires a May proposed decision – leaving only a few weeks to resolve differences, clarify proposals, and create the necessary record (as promised in D.13-06-024) to ensure both reasonable and *workable* compliance requirements for Flexible Capacity. The work left is considerable and the unresolved issues daunting.

AReM believes that a more rationale approach would be for the Commission to extend the current reporting requirement for Flexible Capacity¹⁴ through 2015 and to continue to work jointly with the CAISO and parties to develop uniform and workable Flexible Capacity requirements to be implemented no earlier than the 2016 RA compliance year. In fact, the Office of Ratepayer Advocates argues that “[n]o party has established a need for flexible capacity in 2015.”¹⁵ Thus, a decision to delay compliance of Flexible Capacity requirements may be both prudent and appropriate. AReM respectfully requests that the Commission consider such a delay, which would provide adequate time to resolve differences with the CAISO and create the necessary record for imposing Flexible Capacity compliance obligations on LSEs.

¹³ Marin Clean Energy, p. 4.

¹⁴ D.13-06-024, Ordering Paragraph 6, p. 70.

¹⁵ Office of Ratepayer Advocates, p. 4.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sue Mara".

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