

**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 THE
PRELIMINARY 2014 FLEXIBLE CAPACITY NEEDS ASSESSMENT SUBMITTED
BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
AND REVISED ENERGY DIVISION PROPOSALS**

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The Alliance for Retail Energy Markets (“AReM”)¹ submits these comments, in accordance with the direction provided by Administrative Law Judge (“ALJ”) David M. Gamson of the California Public Utilities Commission (“Commission”) at the April 9, 2014 Resource Adequacy (“RA”) Workshop (“Workshop”), which set this date for filing of comments on the *Preliminary 2014 Flexible Capacity Needs Assessment*, (“CAISO Assessment”) submitted by the California Independent System Operator (“CAISO”) on April 4, 2014 and on the *Revised RA Implementation Staff Proposals* (“Staff Proposals”) issued by Energy Division Staff (“Staff”) on April 3, 2013 and on *Staff Proposal on the Implementation of Flexible Capacity Procurement Framework* (“Staff Flexible Capacity Proposals”) issued by Staff on April 9, 2014.

**I. GENERAL COMMENTS ON THE NEED FOR DELAY IN THE
ENFORCEMENT OF FLEXIBLE CAPACITY REQUIREMENT.**

Throughout these comments, AReM will be commenting upon the numerous areas for which there exists lack of clarity and/or insufficient information with respect to the details of the

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.

flexible capacity program, which the Commission and the CAISO each state will be fully enforced for the 2015 RA year. AReM cannot stress enough the difficult predicament that both the Commission and CAISO are creating with their determination to enforce the flexible capacity requirements without clear regulations and without sufficient time for market participants to understand those regulations and plan their procurement accordingly. Incorporating flexible capacity requirements into the RA program is a fundamental and complex change to the program and will have lasting impacts on how load-serving entities (“LSEs”) procure to meet their RA obligations. It is not realistic for the Commission or the CAISO to expect market participants to enter into transactions to meet these new requirements where there are so many details that have yet to be worked out, especially for market participants, such as the Electric Service Providers (“ESPs”) that AReM represents, who do not have captive customers or cost-of-service rates that can absorb procurement mis-steps. The details do indeed matter, and developing an efficient, cost-effective procurement strategy depends on knowing what those details are. It is also not realistic for the Commission or the CAISO to expect market participants to be able to make informed and rational decisions about their procurement strategy if the final details for this new and fundamentally different capacity regime are put in place with only a very short time before enforceable compliance showings (for which significant non-compliance penalties could be imposed) are due.

AReM has expressed strong reservations about using the RA capacity construct to meet the growing flexible resource requirements of the electric grid, and summarizes those reservations in Section III below. Nevertheless, the concerns raised herein are offered not in the spirit of arguing against this approach, but in the spirit of genuinely wanting the program to work fairly and effectively for all LSEs and the customers they serve. Indeed, AReM’s members have

a strong interest in proving their ability to comply with these new requirements, if and when they are fully adopted by the Commission and the CAISO. AReM fully recognizes the responsibilities that are placed on LSEs in California, and that meeting those responsibilities will, at least to some extent, determine when and how it will be allowed to expand the direct access market.

In the Sections that follow, AReM describes the concerns that it believes support its request that the Commission and CAISO acknowledge that enforcement of a flexible capacity requirement is simply “not ready for prime time” and make it clear now that specific penalties will not accrue from the October or monthly compliance showings required for the 2015 RA year. Such an announcement would provide parties the relief they need from deliberating whether and to what extent they should initiate procurement, even though there remain large gaps in the regulations that will govern such procurement.

II. COMMENTS ON CAISO ASSESSMENT, STAFF PROPOSALS, AND STAFF FLEXIBLE CAPACITY PROPOSALS.

AReM submits comments on the CAISO’s 2014 ISO Flexible Capacity Needs Assessment: Study Methodology, Assumptions, and Preliminary Results (“CAISO Flex Capacity Assessment”) and the Staff Proposals.

A. Significant Issues Remain with Respect to the CAISO Assessment.

AReM notes that the Phase 3 Scoping Memo assumed that the CAISO would file its *final* 2014 flexible capacity report by early April of 2014.² However, the CAISO Assessment filed at the Commission and presented at the Workshop continues to be described as *preliminary results*. Similar to the annual Commission process for setting Local Capacity Requirements (“LCRs”),

² Phase 3 Scoping Memo, R.11-10-023, p. 6.

AReM assumes that the forthcoming Phase 3 proposed decision in May is intended to adopt *final* Flexible Capacity requirements for the CPUC-jurisdictional LSEs. Given the following remaining unresolved issues, that does not seem realistic.

First is the issue of whether the requirements will be monthly or seasonal, or some hybrid of both, a detail that will have significant impact on procurement. At this point in time, the CAISO has said that it will set forth seasonal percentages for each category, and the CPUC has indicated that they agree with the seasonal percentages, but it remains unclear whether or how these seasonal requirements will impact the annual and/or monthly showings.

Second, the Commission Staff does not endorse the CAISO's overall methodology because it continues to focus only on the variability that wind and solar introduce rather than looking at all inflexible resources. The Commission Staff has indicated that they are willing to accept the CAISO methodology for 2015 because the CAISO has said that they will not object if the Commission allocates the overall requirement to the LSEs under its jurisdiction on a different basis. However, the Commission has indicated that it will revisit its allocation mechanism in future years, raising significant concerns for what that will mean for any procurement beyond 2015.

Third, The CAISO's method for determining the Flexible Capacity need includes collecting individual contract data from LSEs on contracted wind and solar capacity by on-line date and location, which it then uses to prepare an "Aggregate RPS Build-Out."³ AReM questions why such data collection is required when the CAISO has ready access to information on all renewable projects under development and their expected on-line dates. Such information

³ CAISO's Preliminary Assessment, p. 3 and Table 1.

is, in fact, already gathered and used by the CAISO in its transmission planning and LCR assessment activities. The CAISO's proposed method is intrusive and requires release of confidential information by LSEs. Accordingly, AReM recommends that the CAISO modify its approach and rely instead on the ample information already available to it on renewable projects, or provide further explanation as to how an LSE's contracts with wind and solar facilities are particularly germane to its determination of the flexible capacity requirement.

Indeed, the annual process for setting future LCRs is both predictable and reliable. The CAISO conducts a transparent process each year, issues a draft report for review and comment by stakeholders, and then files a final report with the Commission by May 1 of each year. If the Commission intends to establish flexible capacity compliance obligations for LSEs, the process for setting those obligations must also be equally transparent, predictable and reliable. AReM appreciates that the CAISO intends that the process for establishing the flexible capacity requirements will be conducted in the same manner and in the same time frame as the LCRs. However, the fact that there remain so many fundamental details to be worked out, none of which is trivial, and each of which will impact the calculation of the flexible capacity, are clear indications that we are "not there yet." These details need to be established and clarified before the Commission is asked to endorse any flexible capacity requirement.

AReM does not believe that sufficient time remains to address these issues in time for adoption of a flexible capacity requirement by the Commission in a June 2014 order. Thus, the issues associated with the as yet unresolved fundamental determination of the flexible capacity requirement comprise the first set of issues that serve as the basis for AReM's recommendation and request stated in Section I of these comments – that the Commission and CAISO should defer any direct enforcement of the flexible capacity requirements for the 2015 RA year, and

instead finalize these details, streamline the process, allow market participants to gain familiarity with the data and market rules, and commence with enforcement in a future year.

B. Details About the Effective Flexible Capacity (“EFC”) Associated With Resources on the Net Qualifying Capacity (“NQC”) List Must Be Made Available.

It was clear at the Workshop that the CAISO and the Commission Staff have not reached agreement on how the EFC for each demand response or energy storage unit should be determined, and that the manner in which these differences would be resolved and when the resolution would be reached were not established.

The Commission and CAISO also remain at odds with respect to another critical element of EFC – how much EFC must come from Category 1 versus Category 2 and 3. And again, the discussion at the Workshop did not resolve the disagreement, much less provide any certainty as to when or how it will get resolved. The Staff has proposed that at least 80% should come from Category 1, but the CAISO has been advocating for lower percentages that would differ in the summer and non-summer months.

Finally, with respect to EFC, a new and equally concerning problem arose for the first time at the Workshop. Specifically, the CAISO made it clear that it did not intend to publish how much of the total EFC attributed to each resource on the NQC list would fall into each of three must-offer related categories. Instead, the CAISO said that it would leave it to the bilateral negotiations between buyers and sellers of capacity to determine and categorize the capacity into each of the three categories. However, the CAISO did say that there would be an after-the-fact validation process that it would use to determine if it agrees with the categorizations contained in the resource and supply plans submitted to it. From AReM’s perspective, it is an entirely unworkable approach for the CAISO (or the Commission) to provide no specificity with respect

to how much of each category each EFC unit can provide, require market participants to reach bilateral agreement on this, and then subject those bilateral agreements to some unknown and unspecified validation process.

In summary, AReM notes that several participants in the Workshop spoke about the very real problems that would develop, and the nearly impossible situation that lack of uniformity in the counting of EFC and how much of each category must be procured would create for buyers and sellers of capacity (the term “being required to serve two masters” was used at the Workshop to describe this problem) should the Commission and CAISO fail to arrive at the same EFC calculations, or the same minimum Category 1 requirement. These EFC-related issues are serious and are likely not amenable to speedy resolution – certainly not in time for efficient RA procurement for the 2015 RA year. Thus, these EFC-related issues are the second set of issues that serve as the basis for the recommendation and request stated in Section I of these comments – that the Commission and CAISO should defer any direct enforcement of the flexible capacity requirements for the 2015 RA year, and instead finalize these details, streamline the process, allow market participants to gain familiarity with the data and market rules, and commence with enforcement in a future year.

C. The Netting Approach for Capacity Associated with CHP Contracts Located in a Territory Other Than the Territory of the IOU That Executed the IOU Contract Seems Reasonable.

Based on the presentation made by Staff at the Workshop and the ensuing discussion in which Staff stated that the proposed netting approach will not in any way diminish what would otherwise be an entity’s Path 26 allocation, AReM does not object to it. However, AReM notes that the Staff’s proposed revisions to Step 4 of Path 26 allocation process adopted in Decision (“D”) 07-06-029 are not entirely clear and that they do not state whether the existing language

regarding treatment of grandfathered RA commitments will remain.⁴ AReM believes that the language clarifying the treatment of grandfathered RA commitments is essential and will not be modified as a result of this netting approach for the CHP contracts in order to ensure non-discriminatory allocation of Path 26.

In addition, the Staff's presentation did not address how the netting impacts the CAM allocation, and while AReM believes that it should have no impact, how this flows through the increasingly complex RA compliance templates could raise new issues.

Because of these open questions, as the Path 26 netting approach moves into operation, AReM reserves the right to raise issues if indeed unintended consequences become apparent.

D. CAM-related issues.

Staff presented a revised mechanism for showings of RA from CAM resources. AReM has several comments.

First, the proposed crediting mechanism for CAM resources appears workable, subject to resolving any unintended consequences that may become apparent as RA compliance templates are developed.

Second, and related to the issue raised in Section II.B above, it is imperative that all LSEs who get a share of the CAM resource's RA know precisely how much of that capacity is EFC, and which category of EFC it satisfies. Comments at the workshop indicated that there may be ongoing disputes between the IOUs and some of the CAM contract counterparties as to whether or not those contracts include transfer of the EFC from the CAM resource owner to the IOU. Of course, the resolution of any such disputes will impact the LSEs who receive an allocation of the CAM RA, and so will impact the amount of EFC they must procure. Moreover, the Commission

⁴ D.07-06-029, Step 4, p. 14.

has determined that those paying for the CAM resources must receive the RA benefit. Accordingly, it is unacceptable for the Commission to leave ESPs in limbo regarding when (or even if) they will receive the RA capacity due them. If the CAM resource's RA benefit is not available to the ESPs because of contractual dispute or administrative issue, then the direct access customers should no longer be required to pay the associated CAM charges for the resource.

Third, the Staff proposal would allow the IOUs to manage any replacement capacity purchases that must be made when the replacement capacity rules are triggered for CAM resources. AReM does not object to that nor to the idea that such replacement capacity will become part of the CAM-related charges paid by all customers. However, AReM does object to the idea that the purchase price of such replacement capacity will be based on the average capacity price from the most recent RA report for IOU portfolio resources used for scheduled outage replacement. While it would be appropriate perhaps to not allow the utilities to recover any more than that average cost for their replacement purchases, there is no reason that non-IOU customers who are saddled with CAM costs should pay any more than what the IOU actually spends to replace the capacity that must be replaced.

E. San Diego Gas & Electric's ("SDG&E's") Proposal for Unbundling Flexible and Generic Attributes for Procurement Purpose ("SDG&E Proposal").

AReM does not believe that the SDG&E Proposal is workable or necessary. First, it appears that the proposal would require some potentially complex management to prevent double counting of the capacity, since the must offer obligations of the flexible capacity are different than the must offer obligations of the generic capacity. Second, market-based transactions should work to enable LSEs who are long on generic or flexible capacity to make that available

to LSEs who are short. AReM believes that these market-based transactions are the best way for the value of the capacity to be reflected.

III. THE SIGNIFICANT EXCESS FLEXIBLE CAPACITY THAT EXISTS MAKES DELAY IN THE ENFORCEMENT OF FLEXIBLE CAPACITY REQUIREMENTS REASONABLE.

The CAISO's 2014 preliminary assessment shows that there are over 30,000 MW of flexible capacity and a peak requirement for flexibility of about 11,000 MW. Moreover, the CAISO noted that its current estimate of the 2015 and 2016 flexible capacity requirements is lower than its previous estimates due to delay in renewable construction. Thus, there is no urgency for the Commission to move forward with flexible capacity procurement obligations for 2015. Indeed, at the Workshop, the CAISO admitted that the real "flexibility problem" is not a resource sufficiency issue, but that not enough resources are bidding in to provide the flexibility that they have. In other words, they are self-scheduling. AReM continue to believe that addressing the self-scheduling issue should not be as complex as designing new categories of capacity and imposing complex procurement and compliance obligations on LSEs. Delaying enforcement of the flexible capacity requirement would allow the Commission and CAISO to continue working to determine if there is a more elegant solution to the flexible capacity requirement that focuses on incentives or regulations that limit self-scheduling

IV. CONCLUSION

AReM appreciates the opportunity to present these comments.

Respectfully submitted,

A handwritten signature in black ink that reads "Sue Mara". The signature is written in a cursive, flowing style.

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