

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Promote Policy and  
Program Coordination and Integration in Electric Utility  
Resource Planning.

R.04-04-003  
(Filed April 1, 2004)

**REPLY COMMENTS OF DUKE ENERGY NORTH AMERICA  
ON CAPACITY MARKETS WHITE PAPER**

Melanie Gillette

Director, State Regulatory Affairs  
Duke Energy North America  
980 Ninth Street, Suite 1420  
Sacramento, CA 95814  
Phone: (916) 441-6233  
Fax: (916) 441-2569  
mlgillette@duke-energy.com

October 11, 2005

Andrew B. Brown

Ellison Schneider & Harris L.L.P.  
2015 H Street  
Sacramento, CA 95814  
Tel: (916) 447-2166  
Fax: (916) 447-3512  
Email: glw@eslawfirm.com

Attorneys for Duke Energy North  
America

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AMERICA  
ON CAPACITY MARKETS WHITE PAPER**

Pursuant to ALJ Minkin’s August 25, 2005 Ruling, Duke Energy North America, LLC (“Duke Energy” or “DENA”) provides these reply comments on the Energy Division’s August 25, 2005 *Capacity Markets White Paper* (“Whitepaper”). DENA filed opening comments on September 23, 2005, describing how a capacity market could address problems with the state of current market failure as well as answering the specific questions posed by in the ALJ Ruling. Having reviewed other parties’ comments, DENA replies with these brief remarks.

**I. Reply Comments.**

**A. *Interim or Bridging Efforts Must Immediately Occur To Create Regulatory Credibility and Avoid Regulatory Uncertainty.***

As addressed by DENA in response to Staff Recommendation No. 8, it is critical that regulatory credibility be established and that market uncertainty be minimized. Practically speaking, this means a clear articulation of the capacity market “end state” that will be pursued and a similarly clear articulation of the path to be taken, including any phase-in of design elements on a clear schedule. The relative roles of the CPUC and CAISO must be clear. Once established, the market should be permitted to operate without threat of intervention. Other parties’ comments articulate the same concerns.<sup>1</sup>

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<sup>1</sup> See, SCE page 14; Constellation, pages 20-21; Calpine, page 8; WCP, page 10; IEP page 13; ORA pages 24-26; PG&E, page 3, 7; Sempra Global, page 12; SDG&E, page 15.

While DENA believes these developments will have a positive effect once brought to full implementation, the fact remains that full implementation of RAR coupled with a capacity market will not occur for some time, and certainly no sooner than two years. Just as DENA has urged the Commission for some time now to provide for “interim” or “bridging” bilateral contracts as a way to secure needed capacity while moving toward formalized capacity markets, that need is now all the more necessary if supply shortfalls are to be avoided.<sup>2</sup> Such actions have not yet been taken, but should be embraced now to provide supply sufficiency during the transition toward full RAR implementation and the creation of a formalized capacity market.

If any regulatory credibility is to exist and the investment climate improve, steps must be taken immediately to assure supply sufficiency, particularly in those local areas with greater reliability problems. As currently outlined in a recent CPUC proposed decision, full RAR compliance will not occur in the next year, leaving important gaps in how to secure capacity critical for system reliability. Immediate actions must be taken before the formalized capacity market structure and RAR are fully operating. DENA urges

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<sup>2</sup> See, e.g., *Comments of Duke Energy North America on the Proposed Decision of ALJ Wetzell Regarding Resource Adequacy Issues*, September 20, 2004 in R.04-04-003 arguing that the utilities should be given interim or transitional procurement authority to secure capacity in anticipation of RAR; *Opening Brief of Duke Energy North America on Electric Utility Resource Planning*, October 18, 2004 in R.04-04-003 arguing in favor of a interim contracting arrangement as described in testimony presented in that case; *Reply Brief of Duke Energy North America on Electric Utility Resource Planning*, November 1, 2004 in R.04-04-003, arguing for interim steps to maintain availability of existing capacity while focusing on the eventual development of a formal capacity market structure; *Comments of Duke Energy North America on the Proposed Decision of ALJ Brown Regarding Electric Utility Long Term Resource Plans*, December 6, 2004 in R.04-04-003 arguing for including authority for interim procurement contracts with existing capacity; *Comments of Duke Energy North America In Response to Commissioner’s Ruling Regarding Interim Resource Adequacy Obligation*, February 18, 2005 in R.04-04-003; *Supplemental Comments of Duke Energy North America Concerning Latest Round of Workshops on Resource Adequacy Issues*, May 10, 2005 in R.04-04-003; *Comments of Duke Energy North America Regarding Draft Energy Action Plan II*, July 1, 2005 letter to CEC President Peevey and CEC Chairman Desmond; *Reply Comments of Duke Energy North America in CEC Docket 04-IEP-1D, California and Western Electricity Supply Outlook Report*, August 5, 2005.

the Commission to articulate the immediate use of 3-5 year capacity contracts with existing generation to assure supply sufficiency during the transition period.

***B. The Formal Capacity Market Should Reside With CAISO, But The Commission Should Require Forward Capacity Contracting Before That Market Is Operating.***

DENA believes there is a significant level of general agreement between parties with respect to the relative roles of the Commission and CAISO for the formal capacity market, although differences exist with respect to certain implementation details. DENA encourages the Commission to have its jurisdictional LSEs pursue capacity contracting well ahead of the operation of the formal CAISO capacity market, consistent with the adopted RAR policies. RAR remains in transition, and even if the currently pending decision is adopted, full implementation cannot be expected for two years. This means that system reliability is not ensured during that transition period. Rather than risking reliability, interim steps should be taken to bridge the current state of the market and provide supply sufficiency.

Information from CAISO could be used to highlight problem reliability areas and focus transitional, interim capacity contracting on providing continued availability of existing generation and capacity expansions in those problem reliability locations. In this way the overall goal of the capacity market construct—maintain existing generation and develop new infrastructure—can be pursued immediately while the formal market structures supporting RAR are incorporated into the CAISO’s wholesale market redesign. Such actions should address the pressing concerns about supply sufficiency in the reliability-troubled areas, thus buying breathing room to develop and implement a formal capacity market structure at CAISO consistent with the resource procurement policies articulated by the Commission.

## II. Conclusion

Upon review of the comments filed by a number of parties, DENA believes there is a substantial level of agreement at a high level regarding the need for regulatory credibility and stability, as well as the use of a formalized capacity market to spur much-needed investment in generation capacity. Despite the high level agreement, immediate 3-5 year transitional contracts must be entered into immediately to provide time to work out the expected disputes of design and implementation details while maintaining system reliability. Failing to address growing local reliability issues now could result in a more difficult supply crisis that would undoubtedly derail RAR and capacity market implementation. Stated differently, the Commission, in conjunction with CAISO and stakeholders, should articulate a durable market direction and path toward implementation that includes the transitional mechanism of bridging contracting efforts to address pressing capacity and reliability needs.

Respectfully submitted,

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Melanie Gillette

Director, State Regulatory Affairs  
Duke Energy North America  
980 Ninth Street, Suite 1420  
Sacramento, CA 95814

Phone: (916) 441-6233  
Fax: (916) 441-2569  
mlgillette@duke-energy.com

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Andrew B. Brown

Ellison Schneider & Harris LLP  
2015 H Street  
Sacramento, CA 95814  
Tel: (916) 447-2166  
Fax: (916) 447-3512  
Email: glw@eslawfirm.com

Attorneys for Duke Energy North  
America

**CERTIFICATE OF SERVICE**

I, Eric Janssen, am over the age of 18 years and employed in the City and County of Sacramento. My business address is 2015 H Street, Sacramento.

On October 11, 2005, I served the within document, **Reply Comments Of Duke Energy North America On Capacity Markets White Paper**, in R.04-04-003, with electronic and mail service as prescribed in R.04-04-003 and the August 25, 2005 ALJ Ruling, and personal service on the Assigned Commissioner and Assigned Administrative Law Judge, at San Francisco, California.

Executed on October 11, 2005, at Sacramento, California.

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Eric Janssen

Service List  
R.04-04-003  
October 11, 2005

abb@eslawfirm.com  
aclark@calpine.com  
ajo@cpuc.ca.gov  
alan.comnes@dynegy.com  
amabed@semprautilities.com  
andrew@simpsonpartners.com  
annette.gilliam@sce.com  
aorchar@smud.org  
armi@smwlaw.com  
aweller@sel.com  
ayk@cpuc.ca.gov  
bcragg@gmsr.com  
bcragg@gmsr.com  
bds@cpuc.ca.gov  
berj.parseghian@sce.com  
beth.fox@sce.com  
bfranklin@eob.ca.gov  
bill.chen@constellation.com  
bill@jbsenergy.com.  
bjones@mjbradley.com  
blaising@braunlegal.com  
bmcc@mccarthy.com  
bpowers@powersengineering.com  
brbarkovich@earthlink.net  
brflynn@flynnrci.com  
brian.theaker@williams.com  
bsk@cpuc.ca.gov  
cab@cpuc.ca.gov  
cabaker906@sbcglobal.net  
car@cpuc.ca.gov  
carlo.zorzoli@enel.it  
case.admin@sce.com  
cem@newsdata.com  
centralfiles@semprautilities.com  
ceyap@earthlink.net  
chicks@water.ca.gov  
chris@emeter.com  
chrishilen@dwt.com  
chrism@mid.org  
ckmitchell1@sbcglobal.net  
cleni@energy.state.ca.us  
clyde.murley@comcast.net  
cmkehrin@ems-ca.com  
cmlong@earthlink.net  
cpe@cpuc.ca.gov  
cpuccases@pge.com  
craigtyler@comcast.net

ctoca@utility-savings.com  
curtis.kebler@gs.com  
daking@sempra.com  
Dan.adler@calcef.org  
dcarroll@downeybrand.com  
ddowers@sfwater.org  
dgarber@sempra.com  
dgeis@dolphingroup.org  
dhuard@manatt.com  
diane\_fellman@fpl.com  
dickerson05@fscgroup.com  
djh@cpuc.ca.gov  
dkates@sonic.net  
dkk@eslawfirm.com  
dks@cpuc.ca.gov  
dmahmud@mwdh2o.com  
dmarcus2@sbcglobal.net  
don.winslow@ppmenergy.com  
douglass@energyattorney.com  
dsandino@water.ca.gov  
dsaul@solel.com  
dsh@cpuc.ca.gov  
dwang@nrdc.org  
dwood8@cox.net  
dws@r-c-s-inc.com  
edchang@flynnrci.com  
edwardoneill@dwt.com  
ehull@ci.chula-vista.ca.us  
eleuze@caiso.com  
ell5@pge.com  
elvine@lbl.gov  
e-recipient@caiso.com  
eric@strategy.com  
evk1@pge.com  
eyussman@knowledgeinenergy.com  
fdeleon@energy.state.ca.us  
filings@a-klaw.com  
fortlieb@sandiego.gov  
frank.cooley@sce.com  
freedman@turn.org  
garson\_knapp@fpl.com  
gbaker@sempra.com  
gbrowne@smud.org  
george.hanson@ci.corona.ca.us  
ghinners@reliant.com  
gig@cpuc.ca.gov  
glw@eslawfirm.com  
gmmorris@emf.net  
greg.blue@dynegy.com  
grosenblum@caiso.com

gtholan@caiso.com  
gumbrelli@cs.com  
gxl2@pge.com  
hchoy@isd.co.la.ca.us  
hcronin@water.ca.gov  
info@tobiaslo.com  
irene.stillings@sdenergy.org  
j0b5@pge.com  
jackp@calpine.com  
james.booth@hklaw.com  
janet.combs@sce.com  
janreid@coastecon.com  
jarmstrong@gmsr.com  
jay.bhalla@intergycorp.com  
jbradley@svmg.org  
jbwilliams@mwe.com  
jcervantes@sandiego.gov  
jeanne.sole@sfgov.org  
jef@cpuc.ca.gov  
jeffgray@dwt.com  
jennifer.holmes@itron.com  
jesus.arredondo@nrgenergy.com  
jf2@cpuc.ca.gov  
jgalloway@ucsusa.org  
jimross@r-c-s-inc.com  
jkarp@whitecase.com  
jkloberdanz@semprautilities.com  
jkloberdanz@semprautilities.com  
jleslie@luce.com  
jilm@pge.com  
jmcarthur@elkhills.com  
JMcMahon@navigantconsulting.com  
joe.como@sfgov.org  
johnredding@earthlink.net  
joyw@mid.org  
jpacheco@water.ca.gov  
jskillman@prodigy.net  
jsqueri@gmsr.com  
jtachera@energy.state.ca.us  
jweil@aglet.org  
karen@klindh.com  
kdg@cpuc.ca.gov  
kduggan@capstoneturbine.com  
kdw@woodruff-expert-services.com  
keith.fuller@itron.com  
keith.mccrea@sablax.com  
keithwhite@earthlink.net  
kena@calpine.com  
kglick@eob.ca.gov  
kgriffin@energy.state.ca.us

kjk@kjkammerer.com  
kl1@cpuc.ca.gov  
klatt@energyattorney.com  
KMelville@sempra.com  
kmelville@sempra.com  
kmills@cfbf.com  
kmorton@sempra.com  
kms@cpuc.ca.gov  
knotsund@uclink.berkeley.edu  
kpp@cpuc.ca.gov  
l\_brown123@hotmail.com  
LAdocket@cpuc.ca.gov  
laura.genao@sce.com  
lcasentini@drintl.com  
lcottle@whitecase.com  
liddell@energyattorney.com  
linda.sherif@calpine.com  
lisa.decker@constellation.com  
lisa\_weinzimer@platts.com  
lkaye@ka-pow.com  
lmh@eslawfirm.com  
lp1@cpuc.ca.gov  
lrm@cpuc.ca.gov  
lscott@landsenergy.com  
lurick@sempra.com  
magq@pge.com  
map@cpuc.ca.gov  
marks@alohasys.com  
mary.lynch@constellation.com  
matt@bradylawus.com  
mclaughlin@braunlegal.com  
mcmannes@aol.com  
mdbk@pge.com  
mdjoseph@adamsbroadwell.com  
meb@cpuc.ca.gov  
mecsoft@pacbell.net  
meg@cpuc.ca.gov  
meg@cpuc.ca.gov  
mflorio@turn.org  
michael.backstrom@sce.com  
michael.crumley@elpaso.com  
michaeledwardboyd@sbcglobal.net  
mjaske@energy.state.ca.us  
mjskowronski@inlandenergy.com  
mlennon@whitecase.com  
mlgilllette@duke-energy.com  
Mmesseng@energy.state.ca.us  
mona.tierney@constellation.com  
moxsen@calpine.com  
mpa@a-klaw.com

mrh2@pge.com  
mrw@mrwassoc.com  
mrw@mrwassoc.com  
mschmidt@semprautilities.com  
mshames@ucan.org  
msnow@manatt.com  
msw@cpuc.ca.gov  
mtrexler@climateservices.com  
mts@cpuc.ca.gov  
myuffee@mwe.com  
mzr@cpuc.ca.gov  
nao@cpuc.ca.gov  
nes@a-klaw.com  
nil@cpuc.ca.gov  
npedersen@hanmor.com  
nrader@calwea.org  
ntoyama@smud.org  
pcmcdonnell@earthlink.net  
pduvair@energy.state.ca.us  
peterbray@yahoo.com  
pha@cpuc.ca.gov  
philm@scdenergy.com  
ppettingill@caiso.com  
psd@cpuc.ca.gov  
pucservice@manatt.com  
puma@davis.com  
rae@cpuc.ca.gov  
ramonag@ebmud.com  
rberliner@manatt.com  
rejohnson@att.com  
rhoffman@anaheim.net  
rhwiser@lbl.gov  
rick\_noger@praxair.com  
rliibert@cfbf.com  
rmd@cpuc.ca.gov  
rmiller@energy.state.ca.us  
roger.pelote@williams.com  
rru@sandag.org  
rsa@a-klaw.com  
rschmidt@bartlewells.com  
rsparks@caiso.com  
rwalthers@pacbell.net  
rwethera@energy.state.ca.us  
samuel.r.sadler@state.or.us  
sarveybob@aol.com  
sberlin@mccarthy.com  
scarter@nrdc.org  
scasey@sfwater.org  
sed@cpuc.ca.gov  
service@spurr.org

sia2@pwrval.com  
sjl@cpuc.ca.gov  
sscb@pge.com  
sschleimer@calpine.com  
ssmyers@att.net  
sst@cpuc.ca.gov  
stevegreenwald@dwt.com  
steven@iepa.com  
susan.freedman@sdenenergy.org  
tam@cpuc.ca.gov  
tcarlson@reliant.com  
tcorr@sempra.com  
tcx@cpuc.ca.gov  
tdp@cpuc.ca.gov  
tglaviano@energy.state.ca.us  
tim.hemig@nrgenergy.com  
tomb@crossborderenergy.com  
toms@i-cpg.com  
trf@cpuc.ca.gov  
troberts@sempra.com  
usdepic@yahoo.com  
vhconsult@earthlink.net  
vjb@cpuc.ca.gov  
vjw3@pge.com  
vwood@smud.org  
wbooth@booth-law.com  
william.tomlinson@elpaso.com  
wkeilani@semprautilities.com  
WKeilani@semprautilities.com  
woodrujb@sce.com  
wsm@cpuc.ca.gov  
wwwesterfield@stoel.com  
ygross@sempraglobal.com  
ztc@cpuc.ca.gov

ENERGY AMERICA, LLC  
ONE STAMFORD PLAZA,  
8TH FLOOR  
263 TRESSER BLVD.  
STAMFORD CT 06901

OCCIDENTAL POWER  
SERVICES, INC.  
5 GREENWAY PLAZA,  
SUITE 110  
HOUSTON TX 77046

BP ENERGY COMPANY  
501 WESTLAKE PARK BLVD  
HOUSTON TX 77079



APS ENERGY SERVICES  
COMPANY, INC.  
400 E. VAN BUREN STREET,  
SUITE 750  
PHOENIX AZ 85004

COMMERCE ENERGY, INC.  
600 ANTON BOULEVARD,  
STE 2000  
COSTA MESA CA 92626

NEW WEST ENERGY  
CORPORATION  
MAILING STATION ISB 665  
PO BOX 61868  
PHOENIX AZ 85082-1868

CITY OF CORONA  
DEPARTMENT OF WATER &  
POWER  
730 CORPORATION YARD  
WAY  
CORONA CA 92880

CONSTELLATION  
NEWENERGY, INC.  
350 SOUTH GRAND AVE.,  
SUITE 2950  
LOS ANGELES CA 90071

CALPINE POWERAMERICA-  
CA, LLC  
4160 DUBLIN BLVD.  
DUBLIN CA 94568

MICHAEL MAZUR  
3 PHASES ELECTRICAL  
CONSULTING  
2100 SEPULVEDA BLVD.,  
SUITE 15  
MANHATTAN BEACH CA  
90266

QUIET ENERGY  
QUIET LLC  
3311 VAN ALLEN PL.  
TOPANGA CA 90290

AMERICAN UTILITY  
NETWORK (A.U.N.)  
10705 DEER CANYON DRIVE  
ALTA LOMA CA 91737

SEMPRA ENERGY  
SOLUTIONS  
101 ASH STREET, HQ09  
SAN DIEGO CA 92101

CORAL POWER, LLC.  
4445 EASTGATE MALL,  
SUITE 100  
SAN DIEGO CA 92121

PILOT POWER GROUP, INC.  
9320 CHESAPEAKE DRIVE,  
SUITE 112  
SAN DIEGO CA 92123

ELECTRICAMERICA  
COMMERCE ENERGY, INC.  
600 ANTON BLVD., SUITE  
2000  
COSTA MESA CA 92626