

**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

**COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS  
ON THE ASSIGNED COMMISSIONER'S RULING REGARDING NEXT STEPS  
IN PROCUREMENT PROCEEDING**

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In accordance with the schedule for comments established by the Assigned Commissioner, the Alliance for Retail Energy Markets ("AReM") hereby submits these comments on the Assigned Commissioner's Ruling Regarding Next Steps in the Procurement Proceeding ("ACR") and the Staff Draft Proposal for Long-Term Procurement Planning Proceeding Work Plan ("Draft Work Plan") issued on December 2, 2005.<sup>1</sup>

**I. INTRODUCTION**

The ACR announces this proceeding will be closed and two new procurement-related proceedings will be opened. The first proceeding, to be opened later this month, will address future resource adequacy ("RA") issues, including implementation of existing RA requirements and extension of RA mandates to local areas and multi-year requirements.<sup>2</sup> The second proceeding, to be opened in early 2006, will handle the biennial long-term procurement planning

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<sup>1</sup> AReM is a California non-profit mutual benefit corporation comprised of electric service providers that serve the majority of the state's direct access load. The comments contained in this filing represent the position of AReM, but not necessarily the view of any affiliates of its members with respect to any specific issue.

<sup>2</sup> ACR, p. 4.

(“LTPP”) cycle for the investor-owned electric utilities (“IOUs”) and other procurement issues.<sup>3</sup> Proposed goals for the LTPP proceeding are set forth in the ACR.<sup>4</sup> The Draft Work Plan identifies activities and timelines required to accomplish the goals for the LTPP proceeding, as well as questions to be addressed for each phase of the proceeding.<sup>5</sup> Both the ACR and the Draft Work Plan indicate that electric service providers (“ESPs”) will be required participants in the LTPP process.<sup>6</sup>

AReM is very concerned that the ACR and, to an even greater extent, the Draft Work Plan blur the distinction between ESPs and the investor-owned electric utilities (“IOUs”) in terms of the Commission’s oversight of their procurement activities. Of particular concern to AReM is language in the ACR and the Draft Work Plan suggesting *ESPs* will be named as *respondents* to the LTPP proceeding and will be required to submit *long-term procurement plans* to the Commission for review and approval.<sup>7</sup> While ESPs are subject to limited Commission oversight with regard to RA requirements and the Renewable Portfolio Standard (“RPS”), the Commission has no authority to regulate ESP procurement in general or require ESPs to submit procurement plans. The ACR and the Draft Work Plan nonetheless appear to contemplate the Commission asserting such authority in the next LTPP proceeding.

AReM anticipates that ESPs will respond to any attempt by the Commission to assert broader jurisdiction over ESPs or impose long-term planning requirements on such entities with strong opposition. Moreover, load and resource data that ESPs have already provided to the

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*, p. 2. The goals of the RA proceeding will be set forth in the Commission’s upcoming order instituting rulemaking for the proceeding.

<sup>5</sup> Draft Work Plan, pp. 3-11.

<sup>6</sup> ACR, p. 7, Draft Work Plan, p. 7.

<sup>7</sup> ACR, pp. 6-7 and 11; Draft Work Plan, p. 7.

California Energy Commission (“CEC”) for the 2005 Integrated Energy Policy Report (“IEPR”) and the analysis and findings contained in the IEPR is more than adequate for purposes of the upcoming round of IOU procurement planning, as well as any debate about broader procurement issues such as those identified in the ACR and the Draft Work Plan. It therefore is neither necessary nor advisable to name ESPs as respondents to the LTPP proceeding or require ESPs to submit long-term procurement plans. AReM strongly urges that the Draft Work Plan be revised accordingly.

## **II. THE COMMISSION HAS NO AUTHORITY TO IMPOSE LONG-TERM PROCUREMENT PLANNING REQUIREMENTS ON ELECTRIC SERVICE PROVIDERS.**

Certain language in the ACR and the Draft Work Plan suggests ESPs will be named as respondents to the LTPP proceeding and will be required to submit long-term procurement plans to the Commission for review and approval. For example, the ACR states: “To meet the RA requirements of AB 380 while at the same time recognizing that LSEs include not just IOUs, but also ESPs and Community Choice Aggregators, the Commission will need the participation of all LSEs in the Commission’s LTPP process.”<sup>8</sup> The ACR does not say whether ESP participation in the LTPP proceeding will be voluntary or mandatory; however, both the ACR and the Draft Work Plan apparently presume the latter.

For example, the Draft Work Plan provides: “[W]e expect that all load serving entities (including IOUs, ESPs and CCAs) will submit long-term procurement plans so that resource planning can be conducted in an integrated fashion. [¶] All respondents to the proceeding will file resource plans, covering 10 years....”<sup>9</sup> Similarly, the ACR states: “With respect to integrated resource planning, in the next procurement proceeding, respondents will be asked to

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<sup>8</sup> ACR, p. 7.

generate integrated resource plans. ... Once adopted, procurement plans will become the basis for numerous future infrastructure Applications.”<sup>10</sup>

AREM’s concern is that naming ESPs as respondents to the LTPP proceeding and requiring ESPs to submit “long-term procurement plans” will blur the line between ESPs and IOUs and serve to improperly expand the scope of the Commission’s oversight over ESP operations. As the Commission has previously recognized, ESPs are not regulated as “public utilities” as defined by the Public Utilities Code, nor are they subject to Commission regulatory authority as a matter of course.<sup>11</sup> Instead, ESPs are subject to Commission oversight only to the extent that the Legislature has granted such authority to the Commission.<sup>12</sup> In other words, the Commission’s regulatory authority with regard to ESPs is limited to the authority it has been granted by statute.

Pursuant to AB 380, the Commission is authorized to establish and enforce RA requirements for all load-serving entities (“LSEs”), including ESPs.<sup>13</sup> Also, pursuant to SB 1078, the Commission is authorized to oversee the participation of ESPs in the RPS program.<sup>14</sup> Nothing in those statutes or any other provisions of the Public Utilities Code, however, gives the Commission authority to regulate ESP procurement in general or impose long-term planning requirements on such entities. Moreover, the Commission’s authority to regulate IOU procurement activities derives from AB 57 and its general regulatory authority over public utilities, and AB 57 established the requirement for IOUs to submit long-term procurement plans

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<sup>9</sup> Draft Work Plan, p. 7.

<sup>10</sup> ACR, p. 6.

<sup>11</sup> D.05-11-025, *mimeo*, p. 12.

<sup>12</sup> *Id.*

<sup>13</sup> Pub. Util. Code § 380

<sup>14</sup> Pub. Util. Code § 399.12(b)(3)(C).

to the Commission for review and approval. Since the Commission's regulatory authority over public utilities does not extend to ESPs and the provisions of AB 57 apply only to IOUs, the Commission has no statutory authority to regulate ESP procurement in general or require ESPs to submit long-term procurement plans to the Commission for approval.

Proposition 80 would have expanded the Commission's regulatory authority over public utilities to include ESPs and essentially would have made ESPs subject to the requirements of AB 57, including the requirement to file long-term procurement plans. However, the Commission strongly opposed Proposition 80 and the California electorate soundly rejected the measure. It is ironic, and more than a little vexing, that the ACR and the Draft Work Plan nonetheless appear to contemplate implementing these very same provisions of Proposition 80 as if they had become law. AReM expects ESPs will fiercely resist any attempt by the Commission to assert jurisdiction over their procurement activities beyond what was granted to the Commission in AB 380 and SB 1078, and they will strongly object to any directive to submit procurement data to the Commission beyond that needed to determine their RA and RPS obligations and demonstrate compliance with those requirements. It thus would be inadvisable to name ESPs as respondents to the LTPP proceeding or direct ESPs to submit "long-term procurement plans" for review and approval.

### **III. DATA THAT ELECTRIC SERVICE PROVIDERS HAVE ALREADY PROVIDED TO THE ENERGY COMMISSION FOR THE 2005 INTEGRATED ENERGY POLICY REPORT IS MORE THAN ADEQUATE FOR THE UPCOMING ROUND OF PROCUREMENT PLANNING.**

AReM understands that the Commission may want to have information about the forecast loads and resource plans of ESPs to inform debate about the procurement planning goals announced in the ACR and the related questions identified in the Draft Work Plan. However, that information is already available. As part of the 2005 IEPR process, ESPs with annual peak

loads of 200 MW or greater (accounting for nearly all of the direct access load in California) provided the CEC with a wealth of detailed information about their historic and forecast loads and historic and forecast purchases of energy and capacity. In addition, the ESPs prepared and submitted ten-year resource plans to the CEC. While the CEC has granted confidentiality to some of that information, key information, including ESP resource planning data, was included in the 2005 IEPR.

To protect its confidentiality, ESP data was aggregated by IOU service territory. Aggregated ESP data should be more than adequate, however, for purposes of the upcoming round of IOU procurement planning and debate about other procurement issues such as the need for new generation. (Indeed, aggregated ESP data should be more useful than ESP-specific data for resource planning purposes given the very small size of any individual ESP's forecast demand and its resource portfolio.) Moreover, ESP-specific data, including annual demand and annual peak demand data, as well as the 10-year resource plans of individual ESPs, are available as part of the public record of the 2005 IEPR proceeding.

The demand and resource planning data ESPs provided to the CEC for the 2005 IEPR took into account RA requirements, the RPS, and regulatory uncertainties such as the timing of the reopening of direct access. There have not been any material changes or developments in any of these areas since ESPs originally submitted their information to the CEC. Moreover, the 2005 IEPR provides both quantitative assessments and substantive analysis of ESP resource requirements in the long-term, including the impact of RA requirements and the RPS. In combination, this information should be more than adequate for purposes of the next round of IOU procurement planning and debate about other procurement planning issues such as those identified in the ACR and the Draft Work Plan.

**IV. ANY REVIEW OF THE NEED FOR NEW GENERATION IN THE NEXT LTPP PROCEEDING SHOULD BE LIMITED TO NEW GENERATION NEEDED TO SERVE BUNDLED LOAD.**

The ACR and Draft Work Plan identify four proposed goals for the next LTPP proceeding, one of which is “[a] review of the need for new generation in California, including consideration of temporary and/or permanent mechanisms (e.g., cost allocation and benefit sharing, or some other alternative) which can ensure construction of and investment in new generation in a timely fashion.” This proposed goal essentially revives the application of Southern California Edison Company to procure up to 1,500 MW of new generation capacity on behalf of all LSEs, as well as Pacific Gas and Electric Company’s “me, too” proposal to acquire up to 1,000 MW of new generation capacity. However, ESPs are able to cover their customers’ loads with existing generation resources, and the amount of load attributable to direct access customers is essentially static due to the suspension of direct access.

Accordingly, any need for new generation in the near term can and should be attributed solely to forecast increases in IOU loads. Any review of the need for new generation should be limited to new generation needed to serve forecast bundled customer loads of the IOUs, and any costs incurred by the IOUs for new generation should be allocated to the IOUs’ current bundled customers only. The questions in the Draft Work Plan related to a review of the need for new generation should be narrowed and revised accordingly.



## V. CONCLUSION

For the reasons above, the Draft Work Plan should be revised to provide:

- ESPs will *not* be named as *respondents* to the LTPP proceeding;
- ESPs will *not* be required to submit *long-term procurement plans* to the Commission for review and approval;
- The *aggregated ESP data* (e.g., demand forecasts and resource planning data) set forth in the 2005 IEPR and the CEC's Transmittal Letter, supplemented if necessary by non-confidential ESP data contained in the record of the 2005 IEPR proceeding, is *more than adequate* and thus should be used for purposes of the upcoming round of IOU procurement planning and any debate about other procurement issues such as those identified in the ACR and the Draft Work Plan;
- Any review of the need for new generation in the next LTPP proceeding will be limited to new generation needed to meet the forecast demand of the IOUs' bundled customers.

Respectfully submitted,

  
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Gregory S.G. Klatt

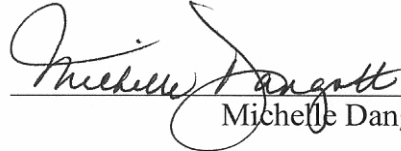
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Date: December 12, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing document on all parties of record in the above-captioned proceeding by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Executed on December 12, 2005, at Woodland Hills, California.

  
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Michelle Dangott